

1 STATES UNITED DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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4 FERNANDO HERNANDEZ, KENNETH CHOW,
5 BRYANT WHITE, DAVID WILLIAMS, MARQUIS ACKLIN,
6 CECILIA JACKSON, TERESA JACKSON,
7 MICHAEL LATTIMORE, and JUANY GUZMAN, Each
Individually, And On Behalf Of All Other
Persons Similarly Situated,

8 Plaintiffs,

9 -against- Index No:
10 12 CV 4339 (ALC) (JLC)

11 THE FRESH DIET, INC., LATE NIGHT EXPRESS
12 COURIER SERVICES, INC. (FL), FRESH DIET EXPRESS
13 CORP. (NY), THE FRESH DIET - NY INC. (NY),
14 FRESH DIET GRAB & GO, INC. (FL) a/k/a
YS CATERING HOLDINGS, INC. (FL) d/b/a
YS CATERING, INC. (FL), FRESH DIET EXPRESS
CORP. (FL), SYED HUSSAIN, Individually,
JUDAH SCHLOSS, Individually, and ZAIMI DUCHMAN,
Individually,

15 Defendants.

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17 EXAMINATION BEFORE TRIAL of
18 the Plaintiff, JUANY GUZMAN, taken by the
19 Defendant, pursuant to Notice, held at the
20 offices of Kaufman, Dolowich, Voluck & Gonzo
21 LLP, 100 William Street, Suite 215, New York,
22 New York 10038, on October 7, 2013, at 10:07
23 a.m., before a Notary Public of the State of
24 New York.

25

1
2 APPEARANCES:
3 THE HARMAN FIRM, PC
4 Attorney for Plaintiffs
5 200 West 57th Street, Suite 900
6 New York, New York 10019
7
8 BY: PETER J. ANDREWS, ESQ.
9
10 KAUFMAN, DOLOWICH, VOLUCK & GONZO LLP
11 Attorneys for Defendants
12 135 Crossways Park Dr., Suite 201
13 Woodbury, New York 11797
14
15 BY: YALE POLLACK, ESQ.
16
17 FILE #: 055611-0002
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1
2 JUAN Y GUZMAN, the witness herein,
3 having been first duly sworn by a Notary Public
4 of the State of New York, was examined and
5 testified as follows:
6 EXAMINATION BY
7 MR. POLLACK:
8 Q. State your name for the record, please.
9 A. Juany Guzman.
10 Q. State your address for the record,
11 please.
12 A. 3760 Notch Street, Macungie,
13 Pennsylvania 18062.
14 Q. Good morning, Mr. Guzman.
15 A. Good morning.
16 Q. Did I pronounce it correctly?
17 A. Yeah.
18 Q. My name is Yale Pollack. I represent
19 the defendants in this action, and today I'm
20 going to be asking you a series of questions
21 regarding your claims in this action. I have
22 just a few ground rules.
23 Please answer all questions verbally so
24 the court reporter can take down your answer.
25 Wait for me to finish my question before

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4 STIPULATIONS
5
6 IT IS HEREBY STIPULATED AND AGREED by and
7 between the attorneys for the respective parties
8 herein, that filing, sealing and certification,
9 and the same are, hereby waived.
10
11 IT IS FURTHER STIPULATED AND AGREED that
12 all objections except as to the form of the
13 question, shall be reserved to the time of the
14 trial.
15
16 IT IS FURTHER STIPULATED AND AGREED that
17 the within deposition may be signed and sworn to
18 by an officer authorized to administer an oath,
19 with the same force and effect as if signed and
20 sworn to before the Court.
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23
24
25

1 J. Guzman
2 answering, and if you don't understand any
3 question that I ask, please let me know. I'll
4 rephrase it until we can come to an
5 understanding of what the question is. If you
6 need to take a break at any time, please let me
7 know. However, the only instruction I have is
8 that if I have a question pending, please
9 answer that question before asking to take a
10 break.
11 A. Okay.
12 Q. Do you understand those instructions?
13 A. Yes.
14 MR. ANDREWS: The other thing is
15 always let Yale finish the question
16 before responding to it. Don't talk at
17 the same time. Otherwise, she'll get
18 very upset with you.
19 THE WITNESS: Okay.
20 Q. Are you taking any medications today
21 that will affect your ability to truthfully
22 respond to my questions?
23 A. No.
24 Q. Are you under the influence of drugs or
25 alcohol right now?

[2] (Pages 2 to 5)

1 J. Guzman
2 A. No.
3 Q. Is there anything else that you could
4 think of that would impair your ability to
5 truthfully respond to my questions today?
6 A. No.
7 Q. Did you review any documents to prepare
8 for today's deposition?
9 A. No.
10 Q. Did you speak with anyone to prepare for
11 today's deposition?
12 A. No.
13 Q. Are you currently employed?
14 A. No.
15 Q. What was your last occupation?
16 A. I worked as a delivery driver for
17 The Fresh Diet.
18 Q. When was that from?
19 A. That was from the mid -- mid January.
20 That was 2000 -- I believe it was 2012. Mid
21 January to the end of June, mid June, around
22 there, of the same year.
23 Q. You haven't had a job since June 2012?
24 A. Yeah.
25 Q. Did you work anywhere else before

1 J. Guzman
2 The Fresh Diet?
3 A. Yes.
4 Q. Where did you work?
5 A. I worked in Pennsylvania. I worked for
6 a couple different warehouses. I worked for a
7 Home Depot warehouse.
8 Q. When was that?
9 A. That was -- I don't know the exact
10 dates. Like I can't give you exact dates.
11 Q. That's fine.
12 A. I can be like more accurate, like
13 2000 -- 2009. That was about 2009. Then in
14 2011, I worked for Behr Paints.
15 Q. B-E-H-R?
16 A. Yeah. Yeah. Also in Pennsylvania.
17 Q. Was Behr Paints your last job before
18 working --
19 A. Yes.
20 Q. -- for The Fresh Diet?
21 MR. ANDREWS: Make sure he
22 finishes the question, and then answer.
23 THE WITNESS: Oh, sorry.
24 Q. -- for The Fresh Diet?
25 A. Yes.

1 J. Guzman
2 Q. What did you do for Behr Paints?
3 A. I was a filler, worked the line just
4 filling up the buckets with paint from the
5 machine.
6 Q. How were you paid when you worked at
7 Behr Paints?
8 A. I was paid by wages, like an hour, like
9 hour wages, by the hour.
10 Q. Do you remember what the hourly wage
11 was?
12 A. I believe it was \$10 at that time.
13 Q. Do you remember where Behr Paints was
14 located?
15 A. It's Bryansville, Pennsylvania. I don't
16 have the exact address.
17 Q. Can you spell the city?
18 A. Oh, that's going to be hard. It's
19 Bryansville.
20 Q. If you can't, that's fine.
21 A. No, I don't have the exact -- how to
22 spell it.
23 MR. ANDREWS: It's Bryansville?
24 THE WITNESS: It's Bryansville,
25 yeah.

1 J. Guzman
2 Q. Bryansville, PA?
3 A. Yes.
4 Q. How long have you lived in Macungie,
5 Pennsylvania?
6 A. Since 2005.
7 Q. You lived there when you worked for
8 Behr Paints, Home Depot, and The Fresh Diet?
9 A. No. I worked there when I worked at
10 Behr Paint, the Home Depot, and when I started
11 working at Fresh Diet, I moved to Brooklyn.
12 Q. When was that?
13 A. That was November of -- November of
14 2011.
15 Q. Where in Brooklyn did you live?
16 A. I can provide an address if that's
17 better.
18 Q. That would be.
19 A. 2975 Avenue W, Brooklyn, New York 11229.
20 Q. Is there an apartment?
21 A. Yeah. It's 5C, as in cat.
22 Q. Who's apartment is that?
23 A. My mother lived there at that time.
24 Q. How did your employment with Behr Paints
25 end?

[3] (Pages 6 to 9)

1 J. Guzman
2 A. It ended because it was by contract,
3 like -- I got the job by third party, and so
4 when the time that that third party ended their
5 contract with Behr Paints, you know, there was
6 no more work for me, so it was like a layoff.
7 Q. Do you remember when that was?
8 A. It was -- it was the year -- it was
9 in -- it was right before I moved to Brooklyn.
10 That was one of the reasons why I moved back to
11 Brooklyn. That's all I can recall for now.
12 Q. Did you have a job waiting for you when
13 you moved to Brooklyn in November 2011?
14 A. No.
15 Q. Is it a residence in Macungie?
16 A. Yes, a residence.
17 Q. Do you own that residence?
18 A. No, my stepfather does.
19 Q. Are you married?
20 A. No.
21 Q. Have you ever been married?
22 A. No.
23 Q. Do you have any children?
24 A. Yes.
25 Q. How many children?

1 J. Guzman
2 A. I have one son.
3 Q. What's his name?
4 MR. ANDREWS: I'm going to
5 direct the witness not to answer. This
6 witness has a minor son. We are not
7 going to disclose the name of a three-
8 or four-year-old child in this
9 deposition. If you want to call the
10 court and ask the court to order this
11 witness to give us the name of his
12 four-year-old son, that's up to you, but
13 he's not going to answer that question.
14 MR. POLLACK: The objection's
15 noted. I'll leave it open for now. I'm
16 not going to call the court.
17 Q. How old is your son?
18 A. Four.
19 Q. What's his birthday?
20 A. It's June 12th.
21 MR. ANDREWS: Objection.
22 Q. What year?
23 A. It's June 12, I believe, '09.
24 Q. Do you have any other children?
25 A. No.

1 J. Guzman
2 Q. Do you live with your son?
3 A. Yes, currently.
4 Q. What's that?
5 A. Currently, yes.
6 Q. Where, in Macungie?
7 A. Yes.
8 Q. Do you know your son's mother's name?
9 A. Yes.
10 MR. ANDREWS: Objection.
11 Don't answer that question.
12 MR. POLLACK: What's the basis?
13 MR. ANDREWS: Again, if you want
14 to call the court and ask Mr. Guzman to
15 start identifying the names of relatives
16 or people he's been in personal
17 relationships with, that's your call.
18 I'm advising him not to answer that
19 question.
20 MR. POLLACK: On what basis?
21 MR. ANDREWS: The court has the
22 discretion to --
23 MR. POLLACK: I understand that.
24 I'm asking what the basis for the
25 objection is.

1 J. Guzman
2 MR. ANDREWS: No possible
3 relevance to any issue in this case as
4 to what the name of the mother of
5 Mr. Guzman's four-year-old son is. I
6 cannot imagine how such a question could
7 possibly be relevant to anything.
8 MR. POLLACK: If we wanted to
9 nonparty her to verify Mr. Guzman's
10 testimony, you don't see how that could
11 be relevant information?
12 MR. ANDREWS: Put your request
13 in writing, and we'll consider it. He's
14 not going to provide the name of his
15 minor child's mother.
16 MR. POLLACK: Or the minor
17 child's name?
18 MR. ANDREWS: Certainly not the
19 minor child's name. If you want to go
20 to Judge Carter and ask Judge Carter to
21 order the disclosure of a four-year-old
22 boy's name, that's your decision. I
23 think it would be an interesting
24 conversation between you and the judge.
25 MR. POLLACK: You would be in

[4] (Pages 10 to 13)

1 J. Guzman
2 part of it, so yes, it would be.
3 Q. You were never married to --
4 A. No, I wasn't.
5 Q. -- the undisclosed individual?
6 A. Uh-huh.
7 MR. ANDREWS: Make sure you wait
8 for him, and answer verbally so she
9 takes down your answers.
10 THE WITNESS: Okay.
11 Q. Do you know where the mother lives?
12 A. Yes.
13 Q. Where is that?
14 A. We live together.
15 Q. How long have you lived together?
16 A. Now, for two years.
17 Q. Did you live with her during the time
18 that you were working for The Fresh Diet?
19 A. Yes. We got together around that time.
20 Yes.
21 Q. Would she have information concerning
22 the hours you claim you were working for
23 The Fresh Diet?
24 MR. ANDREWS: Objection.
25 Answer. Answer the question, if

1 J. Guzman
2 you can.
3 A. Yeah. I would say she would for the
4 simple fact that she knew when I would leave
5 the house and when I would come back to the
6 house. Other than that, you know, there's no
7 other information she could provide.
8 Q. She would have that information though?
9 A. Yeah. She would say, you know --
10 because the time that I would leave the house
11 to go to work and the time that I would return
12 to the house. I don't know if it's relevant
13 to --
14 MR. ANDREWS: That's okay.
15 That's not your job.
16 Q. What's her name?
17 MR. ANDREWS: Objection.
18 If the defendants wish to
19 subpoena this person, please put that in
20 writing, and we will provide the
21 information. The discovery's closing
22 soon.
23 MR. POLLACK: Right. That's why
24 I'm not looking to go back. This is a
25 pretty ridiculous objection. He just

1 J. Guzman
2 admitted that she knows the hours that
3 he claimed he was working.
4 MR. ANDREWS: Do you intend to
5 subpoena --
6 MR. POLLACK: I don't know.
7 MR. ANDREWS: Let me finish the
8 question.
9 Do you intend to subpoena the
10 wives, the spouses, the girlfriends, the
11 brothers and sisters of the plaintiffs
12 in this case?
13 MR. POLLACK: I reserve the
14 right to.
15 MR. ANDREWS: Okay. Put that in
16 writing and --
17 MR. POLLACK: We're dealing with
18 a Friday deadline. I don't know what
19 this issue is for providing the name of
20 someone similar to every name that other
21 plaintiffs have disclosed concerning
22 their significant others, their spouses,
23 their children.
24 MR. ANDREWS: During a break in
25 the deposition, we will make a decision

1 J. Guzman
2 as to whether to give you that
3 information. At this time, we're not
4 providing the names of spouses,
5 girlfriends, brothers, sisters, mothers,
6 fathers, daughters, and sons to you.
7 MR. POLLACK: They have been
8 provided in other depositions, so I'm
9 unsure what the basis for the objection
10 is all of a sudden today.
11 MR. ANDREWS: The fact that
12 you're seeking the name of a
13 four-year-old child --
14 MR. POLLACK: That's not the
15 issue right now.
16 MR. ANDREWS: -- is remarkable.
17 MR. POLLACK: That's not the
18 issue right now.
19 MR. ANDREWS: You asked the
20 question.
21 MR. POLLACK: Okay, Mr. Andrews.
22 I'm asking for the name of the mother
23 who has knowledge of the hours.
24 MR. ANDREWS: We will consider
25 providing that information.

[5] (Pages 14 to 17)

1 J. Guzman
2 Q. Can you describe your educational
3 background?
4 A. Sure. I finished high school, and I
5 attended Cornell University for a semester, and
6 then after I moved to Pennsylvania, I went to
7 Lehigh Carbon Community College, and I have a
8 degree in audio engineering.
9 Q. What was the name of the community
10 college?
11 A. Lehigh Carbon.
12 Q. Did you graduate?
13 A. Yes.
14 Q. What year?
15 A. That was '08.
16 Q. You have a degree in what?
17 A. Audio engineering.
18 Q. Audio?
19 A. Uh-huh.
20 Q. Are you a United states citizen?
21 A. Yes.
22 Q. Were you born in the United States?
23 A. No.
24 Q. Where were you born?
25 A. Dominican Republic.

1 J. Guzman
2 Q. When did you come to the United States?
3 A. 1990 -- 1991.
4 Q. Where did you come to?
5 A. New York, Brooklyn.
6 Q. When did you become a US citizen?
7 A. When I became eighteen. 2004, I believe
8 it was. 2004.
9 Q. Have you ever been involved in any other
10 lawsuits?
11 A. No.
12 Q. I'm now going to show you a document
13 that's been previously marked for
14 identification as Defendant's Exhibit 13 on
15 September 20, 2013, and I'm going to ask for
16 you to look at that document, and then after
17 you had a chance to review it, tell me if
18 you've ever seen that document before today
19 (handing).
20 A. No, I never even seen this document.
21 (Whereupon, Notice of EBT was
22 marked as Defendant's Exhibit 61, for
23 identification, as of this date.)
24 Q. I'm now showing you a document that's
25 been marked for identification as Defendant's

1 J. Guzman
2 Exhibit 61, and I'm going to ask if you've ever
3 seen that document before today (handing).
4 A. No, I haven't seen it before today.
5 Q. Do you understand what your claims in
6 this action are?
7 A. Yes.
8 Q. What is your understanding of the claims
9 in this action?
10 A. My understanding of the claim, it's for
11 the overtime and the time not -- not paid, and
12 I also feel very strong that I was retaliated
13 against, and that's basically all that I
14 understand.
15 Q. When you say "overtime," what do you
16 mean?
17 MR. ANDREWS: Objection.
18 You can answer.
19 THE WITNESS: Yeah, that's okay.
20 A. Time -- time that I was not compensated
21 for that I worked. Like -- like during the
22 week, I worked more hours than like you would
23 work, you know. I don't know how to explain it
24 that well but just hours that I worked over
25 forty hours, like weeks that I worked over

1 J. Guzman
2 forty hours.
3 Q. Over forty hours?
4 A. Uh-huh.
5 Q. Did you provide any documents to your
6 attorneys concerning your claims in this
7 lawsuit?
8 A. I provided some documents.
9 Q. What documents did you provide?
10 A. Manifests from the work orders and some
11 pay stubs. I believe that was, more or less,
12 it.
13 Q. Do you know why you believe the
14 manifests were relevant to your claims in this
15 action?
16 MR. ANDREWS: Objection.
17 If you can, answer.
18 A. What's -- it's the only thing that we
19 had to do the work with, you know, so -- that's
20 the only way, you know, that I can show that I
21 was at a certain place at a certain time.
22 Q. What would be on a manifest?
23 A. The manifest would have the amount of
24 stops or deliveries. It would also have the
25 name of the client, ID numbers, the way to

[6] (Pages 18 to 21)

1 J. Guzman
 2 conduct the delivery in detail. Then it would
 3 have a column for us to put the time that it
 4 was conducted, the empty bags that were picked
 5 up, and any comments that we had on that stop,
 6 and then it has -- did I tell you about the
 7 time? It's a slot where you put the time for
 8 the delivery.
 9 Q. Is it your testimony that you gave
 10 manifests to your attorneys?
 11 A. I -- I handed a couple of them. I
 12 didn't have a lot because we would have to hand
 13 them in to The Fresh Diet and Syed every
 14 morning.
 15 MR. POLLACK: I'm going to make
 16 a request for the production of those
 17 manifests.
 18 MR. ANDREWS: That's for me to
 19 take care of.
 20 THE WITNESS: Okay. No problem.
 21 Q. Are you aware of the company Late Night
 22 Express Courier Services, Inc.?
 23 A. No.
 24 Q. Have you ever heard of that company?
 25 A. It -- I haven't heard of it, but I could

1 J. Guzman
 2 see that in my checks it would say that with an
 3 address. I don't recall the address, but I
 4 never heard anybody say that.
 5 Q. When you say it would appear on your
 6 checks, what do you mean?
 7 A. On my -- when I got paid, it would
 8 appear, the name on the checks.
 9 Q. Late Night Express Courier Services,
 10 Inc. would be on your checks?
 11 A. Yes.
 12 Q. You testified that you became a delivery
 13 driver for The Fresh Diet in about mid
 14 January 2012, correct?
 15 A. Yes, it was about mid January.
 16 Q. How did you hear about the position?
 17 A. Well, when I moved here to New York, I
 18 was searching for a job, and a friend of mine,
 19 he said that they were looking for drivers at
 20 the company, and so I came in, and I met
 21 Syed Hussain, and I filled out an appointment
 22 application, and then he asked me to come back
 23 and bring in a copy of my driver's license and
 24 abstract record, which is the driving record.
 25 I -- together with filling out the application,

1 J. Guzman
 2 I handed in those two documents, which he made
 3 photocopies of.
 4 (Whereupon, Driver's license was
 5 marked as Defendant's Exhibit 62, for
 6 identification, as of this date.)
 7 Q. I'm now showing you a document that's
 8 been marked as FD000165 and now marked as
 9 Defendant's Exhibit 62 for identification
 10 (handing).
 11 I'm going to ask if you've ever seen
 12 that document before today.
 13 A. Yes.
 14 Q. What is that document?
 15 A. My driver's license.
 16 Q. Is that the driver's license you would
 17 have shown to Syed in January 2012?
 18 A. Yes.
 19 Q. You say you submitted this and a
 20 driver's abstract?
 21 A. Yes, a driving record.
 22 Q. Were there any other documents that you
 23 submitted?
 24 A. At that time, no.
 25 MR. ANDREWS: Objection.

1 J. Guzman
 2 He also said an employment
 3 application.
 4 A. Oh, yeah. I handed in the application
 5 that I had to fill out and -- together with the
 6 driver's license and the abstract record.
 7 And then later on, like about a week
 8 later, when I got a call to come in, then he
 9 told me that I would get a certain route, and
 10 he asked for me to fill out a -- like a tax
 11 form and like where you put dependents and
 12 stuff like that, and also, I had to do a
 13 photocopy of my Social Security card.
 14 (Whereupon, Social Security card
 15 was marked as Defendant's Exhibit 63,
 16 for identification, as of this date.)
 17 Q. I'm now showing you a document that's
 18 been marked for identification as Defendant's
 19 Exhibit 63, Bate stamp number FD000167, and I'm
 20 going to ask if you've ever seen that document
 21 before today (handing).
 22 A. Yes.
 23 Q. What is that document?
 24 A. That's a copy of my Social Security
 25 card.

[7] (Pages 22 to 25)

1 J. Guzman
2 Q. Is that a copy of the Social Security
3 card you were referring to earlier that you
4 later submitted to Syed?
5 A. Yes, the same Social Security card.
6 Q. Now I'm going to show you a document
7 that's been previously marked for
8 identification as Defendant's Exhibit 4 on
9 September 17, 2013, and I'm going to ask if
10 you've ever seen that document before today
11 (handing).
12 A. No.
13 Q. I'm now showing you another document
14 that has been previously marked for
15 identification as Defendant's Exhibit 5 on
16 September 17, 2013, and I'm going to ask if
17 you've ever seen that document before today
18 (handing).
19 A. No.
20 Q. Do you recall ever entering into any
21 type of an agreement with Late Night or
22 The Fresh Diet?
23 A. No, I never did any agreement with
24 either party.
25 Q. I'm now showing you a document that's

1 J. Guzman
2 been marked for identification previously as
3 Defendant's Exhibit 18 on September 20, 2013,
4 and I'm going to ask if you've ever seen that
5 document before today (handing).
6 A. No.
7 Q. Who was the friend that you were
8 referring to earlier that told you about the
9 position?
10 A. That would be Fernando Hernandez.
11 Q. How did you know Mr. Hernandez in
12 January 2012?
13 A. Well, I -- I met Mr. Hernandez by
14 another mutual friend about a year before that.
15 Q. Who was the other mutual friend?
16 A. Johnny Falcones.
17 Q. Did Mr. Falcones ever work for The Fresh
18 Diet?
19 A. No.
20 Q. Where did you meet Mr. Hernandez?
21 A. At his house.
22 Q. Where was that?
23 A. That was in Brooklyn.
24 Q. Were you employed at the time you
25 initially met Mr. Hernandez?

1 J. Guzman
2 A. Yes. I was still living in Pennsylvania
3 at that time.
4 Q. You were working for Behr?
5 A. Yes.
6 Q. During your initial meeting, had
7 anything come up in your discussion with
8 Mr. Hernandez about obtaining employment in
9 Brooklyn?
10 A. No.
11 Q. Do you recall when Mr. Hernandez told
12 you about the driver position in New York?
13 MR. ANDREWS: Objection.
14 A. I don't recall the exact date of that.
15 Q. Do you recall a month and year?
16 A. It was in January.
17 Q. Of 2012?
18 A. Yes.
19 Q. Where did you go to meet Syed for the
20 first time?
21 A. At the warehouse, at the kitchen. I
22 believe it's -- I don't know the address.
23 Baltic, I believe it was.
24 Q. Baltic?
25 A. Yeah, the one where -- the one where I

1 J. Guzman
2 was working at.
3 Q. Did you only work out of one facility?
4 A. Uh-huh.
5 MR. ANDREWS: Say yes. Don't
6 say uh-huh.
7 A. Oh, sorry. Yes.
8 Q. That's the one on Baltic in Brooklyn?
9 A. Yes.
10 Q. How long after your meeting with Syed
11 did you first perform any duties for The Fresh
12 Diet?
13 A. It was a week later.
14 Q. How did you learn to perform duties that
15 week later?
16 A. Well, Syed would tell you there was --
17 he -- he just told me like what I had to do
18 when I come in and the rules to follow.
19 Q. What did he tell you that you had to do
20 when you came in?
21 A. He told me when you come in, you first
22 come to me, and you pick up the manifest
23 because they had like mailboxes, which had
24 like -- instead of having names, it had like
25 the routes, and so the manifests would be

[8] (Pages 26 to 29)

1 J. Guzman
 2 already inside that route together with keys or
 3 anything that -- that I need or anyone needed
 4 to do the route. So I would go to him. He
 5 told me just come to me.
 6 He assigned to me a specific route, and
 7 so -- so in the beginning, I did not know how
 8 to -- how to map out the route, so he would
 9 show me exactly how I should map out the route.
 10 And then he showed me that I had to go to the
 11 kitchen where the freezer was at, and he showed
 12 me how to put the bags full of food in a bin
 13 and to make sure to check for every single bag
 14 to have a bag tie, and then he told me, at that
 15 time, that if the bag that had to be bag tied
 16 did not have a bag tie and they had a complaint
 17 by the client that I would be docked a certain
 18 amount of dollars, which I don't have -- I
 19 don't recall the exact amount. I believe it
 20 was \$50, but I don't want to, you know, say
 21 something that I don't recall perfectly.
 22 After that, he showed me how to put all
 23 the bags in the car the proper way so that they
 24 wouldn't have to be crushed or any of the food
 25 would be damaged. Then he showed me how to

1 J. Guzman
 2 take the manifests and write the time, the
 3 comment, if I picked up the bags, how many.
 4 And then another thing he told me is to call
 5 him if I had any situation during the route,
 6 and then -- I had to finish by 5:00 a.m. in the
 7 morning. The last stop had to be by 5:00 a.m.
 8 in the morning.
 9 And then he asked me after I finished
 10 the last stop for me to text in the bag count
 11 of how many bags were delivered, how many bags
 12 were picked up. And then he asked me to return
 13 to the warehouse to return the empty bags that
 14 had ice packs and put the ice packs where they
 15 went, and that's all I can recall for now.
 16 Q. How long did that explanation by Syed
 17 take?
 18 A. I would say the first day it was an hour
 19 and a half, but it took me about a week of
 20 Syed, you know, more or less, explaining to me
 21 the best way to -- to do my duties. It took me
 22 about a week to actually, you know -- then I
 23 was like, you know, I can actually do this, and
 24 I learned the way that they wanted everything
 25 to be done.

1 J. Guzman
 2 Q. Was there a particular route that you
 3 were assigned in the beginning of --
 4 A. Yes. It was actually this area,
 5 Downtown. It was from about 20 -- like 23rd
 6 Street down.
 7 MR. ANDREWS: When you say "this
 8 area," you mean Lower Manhattan?
 9 THE WITNESS: Yeah, Lower
 10 Manhattan. Yeah.
 11 Q. Was your route exclusively in Manhattan?
 12 A. Yes, because when -- when I got hired,
 13 he -- when I sat down with him to fill out the
 14 application, he specifically asked me, I need a
 15 driver for Manhattan, and that's what my duty
 16 were.
 17 Q. Did the route ever change?
 18 A. Yes.
 19 Q. When?
 20 A. It changed after -- after -- after Syed
 21 like -- after Syed found out that I had a
 22 claim, I was part of a claim.
 23 Q. Do you remember when that was?
 24 A. That was actually like -- like a month
 25 before -- like almost a month -- I don't want

1 J. Guzman
 2 to say the exact date, but it was almost a
 3 month before he was served, before they were
 4 served. It was almost like a month before,
 5 before that.
 6 Q. Do you remember what month in 2012 that
 7 may have been?
 8 A. I don't -- I don't recall. I rather not
 9 say what I don't recall exactly. I know it was
 10 almost like thirty days.
 11 Q. Between the time you started and the
 12 time your route allegedly changed, did you
 13 always do the same route?
 14 A. Yes.
 15 Q. Did that route have a name?
 16 A. I don't recall the name. I don't
 17 recall, right now, the name of the route.
 18 Q. Do you remember how many stops were on
 19 the route?
 20 A. It varied. It was anywhere from forty
 21 something stops to like eighty stops, seventy
 22 stops.
 23 Q. Is that in one night?
 24 A. Yes.
 25 Q. Did anyone else perform the route with

[9] (Pages 30 to 33)

1	J. Guzman	1	J. Guzman
2	you?	2	A. Yes.
3	A. No.	3	Q. If you didn't receive a call that food
4	Q. Were you compensated for the work you	4	was completed earlier, you would show up at
5	performed?	5	5:00 p.m.?
6	A. Yes.	6	A. Yes, if we had --
7	Q. How were you compensated?	7	MR. ANDREWS: Objection.
8	A. It was, I believe, \$3 per -- per	8	Q. Yes?
9	delivery. Or actually -- let me just -- per	9	A. Yes, I had to show up at 5:00.
10	stop, not per delivery. Per stop, because	10	Q. Was it your testimony that it usually
11	sometimes you would do three or four deliveries	11	was not finished earlier?
12	to the same apartment. You don't get paid for	12	A. Yeah, it was usually not finished on
13	the different clients. It was just for going	13	time.
14	there for the stop.	14	Q. When you say "on time," what does that
15	Q. If there were multiple clients in one	15	mean?
16	building, is it your testimony that you would	16	A. Like, you know, the food to be there
17	only get paid for the stop at that building?	17	early during the day. It was usually -- you
18	A. No. If there was multiple families in	18	know, you get there -- I would get there at
19	that building, you would get paid for the	19	5:00 and won't leave the warehouse until like
20	multiple families, but let's say, for example,	20	7:00 at night.
21	you and your wife would order as two different	21	Q. If you arrived at 5:00 but you weren't
22	clients, you know, it would be paid by that	22	going to leave until 7:00, what would you do
23	stop to that one --	23	between 5:00 and 7:00?
24	Q. Residence?	24	A. Well, we prepare -- I would prepare for
25	A. -- place.	25	the route the way that Syed told me in the

1	J. Guzman	1	J. Guzman
2	Yeah. It's not by clients, and it's not	2	beginning and would help pack -- pack the food,
3	by bags. It was by stops.	3	would help -- or order the food by numbers and
4	Q. If there were multiple apartments within	4	stuff, like by routes. So we'll help with
5	one building --	5	that.
6	A. Yes.	6	Q. Were there other people who were
7	Q. -- you would get paid for a stop at each	7	assigned to packing the food in the bags?
8	of those apartments in the building?	8	A. I don't -- there was -- I believe there
9	A. Yes, correct.	9	was -- I don't know exactly. I can only say
10	Q. What time would you show up to perform	10	what I saw. I know there were employees
11	your deliveries?	11	that -- that worked at the facility. They
12	A. The time varied. It's anywhere between	12	don't do deliveries, and they were the ones
13	3:00 and 5:00. No later than 5:00. 5:00,	13	that packed the food, but when they were
14	5:30.	14	running late on the -- you know, on the stuff,
15	Q. 3:00 p.m. to 5:00 p.m.?	15	then I had to help pack the food.
16	A. Yeah, but it varied because if the food	16	Q. When you say you had to help pack the
17	was done earlier or -- I would rather, you	17	food, what do you mean?
18	know, start as soon as possible. So once I was	18	A. Syed would ask -- would ask us to help
19	noticed that the food was, you know, there	19	pack the food and to sort it.
20	earlier, I would try to start earlier.	20	Q. When you say "us," who are you referring
21	But if I did not get a call that the	21	to?
22	food was done earlier, which was most of the	22	A. The entire drivers that were there.
23	case, I would -- I had to make sure that I was	23	Q. Typically, what time would you leave the
24	there at 5:00.	24	warehouse to start the deliveries?
25	Q. 5:00 p.m.?	25	A. Around 7:00 p.m. typically.

[10] (Pages 34 to 37)

1 J. Guzman
 2 There were times where there was an
 3 exception where it was a lot later, but that
 4 was because, you know, the food was not ready
 5 and we had to wait. Normally, it was 7:00 I
 6 would be out.
 7 Q. Did you always arrive at 5:00 p.m., the
 8 latest?
 9 MR. ANDREWS: Objection.
 10 Q. You can answer.
 11 THE WITNESS: Can I answer or --
 12 MR. ANDREWS: You can answer.
 13 If you can answer, go ahead.
 14 THE WITNESS: Yeah, it's just
 15 the facts.
 16 A. I would say ninety-eight percent of the
 17 time. There was probably one or two instances
 18 when I probably arrived late to work like
 19 anyone would arrive, you know, late to work,
 20 but at that time, I would always be in contact
 21 with Syed and let him know the situation and
 22 the time I can be at work, and the latest one
 23 day was like -- I got there 7:00, so I got out
 24 by like 9:00, 9:30. But like I said, every
 25 time -- any time if that happened, I would text

1 J. Guzman
 2 Syed prior to getting there.
 3 Q. Is it your testimony the latest you ever
 4 showed up was 7:00 p.m.?
 5 A. Yeah, around 7:00, 7:00 p.m.
 6 Q. How many times did that happen?
 7 A. Not too frequently. Probably like --
 8 like I said, from the time I was working there,
 9 probably like two or three times, not frequent.
 10 Q. What time would you typically end your
 11 delivery route?
 12 A. That question, it's -- I don't know
 13 which answer you want because there's like two
 14 answers to that question.
 15 MR. ANDREWS: Just explain
 16 everything.
 17 THE WITNESS: Okay.
 18 A. So, for example, I would finish my route
 19 before 5:00 a.m. Typically, I would finish
 20 around 3:30, but when I'm talking about the
 21 route, it's finishing at the client's door
 22 around that time, and when it was eighty stops,
 23 of course, that would take me up to 5:00 in the
 24 morning. 5:10, 5:05, you know, I was there
 25 because it's a lot of work. But when there was

1 J. Guzman
 2 less work, it would be around 3:00, 3:00 a.m.
 3 But like I said, that's at the client's door.
 4 Then you have to drive, from whichever
 5 client it was, whether it was in the city, back
 6 to the warehouse and do the duties of taking
 7 the ice, putting it where it goes, the bags,
 8 putting it where they go, and finishing the
 9 paperwork and putting it in the bin for Syed
 10 and texting him and stuff. So, you know,
 11 that's extra time that -- you know, so I don't
 12 know which answer you want.
 13 Q. For the deliveries themselves -- and
 14 again, that's from first door to the last
 15 door -- what would you say the typical night
 16 would consist of from the first stop to the
 17 last stop?
 18 MR. ANDREWS: Objection.
 19 You can answer.
 20 A. I would say -- well, I don't have a
 21 specific time frame. I would say if it was
 22 like the -- like a short route, like I said,
 23 the night was not so many stops, I would say it
 24 would take about eight hours, seven hours to
 25 complete the route depending on traffic.

1 J. Guzman
 2 Like Monday was a lot easier. Even
 3 though we had more work, it was a lot easier to
 4 do it, but going to Wednesday to Friday, those
 5 were like a lot of traffic, so it would take
 6 longer.
 7 And then when I had those nights that I
 8 had like eighty, seventy bags, that would take
 9 about ten hours for me to complete. So it all
 10 depended on how many stops for that night.
 11 Q. When you said it could take seven to
 12 eight hours, what time period are you referring
 13 to?
 14 A. From the time that I was getting to the
 15 client's house to the time that you were
 16 finishing to come back to the warehouse.
 17 Q. Would that be from 7:00 p.m. to
 18 3:00 a.m.?
 19 A. More or less, yes. It would be from
 20 7:00 to whenever I was finished.
 21 Q. When you say it would take ten hours,
 22 what span are you looking at?
 23 A. That's when we had -- remember I told
 24 you there were times where I had eighty,
 25 seventy bags? That's like almost double the

1 J. Guzman
 2 forty bags, so that would take a lot more time
 3 because we have to drive. So that one was like
 4 a couple hours more, like two, three hours
 5 additional.
 6 Q. That may take from 7:00 p.m. until
 7 5:00 a.m.?
 8 A. Yes, exactly, 5:00, 5:15. Like cutting
 9 it real close to 5:00, like after 5:00, like
 10 right there.
 11 Q. Where was the last stop on the route
 12 that you drove from January until --
 13 A. Well, the --
 14 MR. ANDREWS: Objection.
 15 A. The last stop -- I can't tell you what
 16 was the last stop because, you know, it varied
 17 depending on the client.
 18 Q. You were assigned from 23rd Street
 19 below, right?
 20 A. Yes.
 21 Q. When you would start your route, where
 22 would you start?
 23 A. I typically -- I typically would do from
 24 north to south because of traffic.
 25 Q. You're saying from 23rd --

1 J. Guzman
 2 A. Down.
 3 Q. -- south?
 4 A. Yes.
 5 And a lot of the stops were in this
 6 area, and I'm sure you're familiar with this
 7 area. During the day, you can't get into like
 8 Wall Street, you know, like when you driving a
 9 car. So, you know, it would be -- well, Syed
 10 recommended me to start -- you know, told me
 11 start north and go south, and then that way,
 12 you know, you get there in the night -- you
 13 know, in the morning time, and you can just
 14 leave your car double-parked, and, you know,
 15 the police doesn't -- won't bother you. So I
 16 would end up in this area.
 17 Q. When you're saying "this area," you're
 18 saying the area around --
 19 A. Like Wall Street.
 20 Q. -- this office building?
 21 A. Yeah, around this office building. Yes.
 22 MR. ANDREWS: And you said the
 23 Wall Street area.
 24 THE WITNESS: Yeah, like Wall
 25 Street.

1 J. Guzman
 2 A. I had deliveries here on Williams as
 3 well.
 4 Q. Did you only deliver to residential
 5 buildings, or did you also deliver to office
 6 buildings?
 7 A. There were office buildings also, yes.
 8 Q. Were you responsible for the West to
 9 East Side?
 10 A. No. No.
 11 Q. What was your --
 12 A. It was mainly the West, West Side.
 13 Q. The West Side --
 14 A. Yeah.
 15 Q. -- of Lower Manhattan?
 16 A. Yes, it was mainly. There was a couple
 17 of stops that were not on the West Side, but it
 18 was mainly the West Side.
 19 Q. How far was your first stop from the
 20 Brooklyn facility?
 21 A. In -- in miles?
 22 Q. In time, driving time.
 23 A. I can't -- I can't have an answer for
 24 that because it all depends on traffic.
 25 Q. What was the quickest it could take?

1 J. Guzman
 2 A. The quickest? I would say
 3 twenty minutes, twenty-five minutes.
 4 Q. What's the longest it could take?
 5 A. Hour or over an hour, especially when
 6 there was construction. I remember that.
 7 Q. Were there any particular bridges or
 8 tunnels that you took to get from Brooklyn to
 9 Manhattan?
 10 A. It would be Brooklyn or Manhattan Bridge
 11 depending on which one they were not working
 12 on.
 13 Q. You didn't incur tolls when you
 14 performed your delivery?
 15 A. No.
 16 Q. When you were finished, what was the
 17 quickest it could take for you to get from your
 18 last stop back to the Brooklyn facility?
 19 A. The quick -- about fifteen minutes.
 20 Q. What about the longest?
 21 A. About an hour.
 22 Q. How many days of the week did you
 23 perform deliveries?
 24 A. I performed deliveries from Sunday to --
 25 I would come on Friday nights going into

[12] (Pages 42 to 45)

1 J. Guzman
2 Saturday morning, and that was for about three
3 months of the time that I was there, the first
4 three months. And then after, about those
5 three months, I -- I had a conversation with
6 Syed, and based on that conversation, I was
7 only doing Sunday to Thursday, you know, going
8 into Friday morning, but I did not have to come
9 in on Friday evening to Saturday.
10 Q. Is it your testimony that it went from
11 six nights a week to five nights a week?
12 MR. ANDREWS: Objection.
13 A. It went -- it went -- no. It went from
14 Sunday, you know, afternoon/evening, to
15 Saturday in the morning, and after I had the
16 conversation with Syed, it went from Sunday
17 afternoon/evening to Friday morning. You know,
18 I would come in Thursday in the evening, finish
19 Friday morning. I did not have to come in
20 Friday afternoon to do into Saturday.
21 Q. I just want to get this clear.
22 From January 2012 until three months
23 later, it would be April 2012?
24 A. More or less, yeah.
25 Q. How many nights a week were you working?

1 J. Guzman
2 A night being starting your route on, I
3 understand, the one day and finishing the next
4 day of the week.
5 A. That's what I'm saying. I'm saying --
6 Q. You're saying Sunday night, right?
7 A. Uh-huh, Sunday night.
8 Q. Monday night?
9 A. Monday night.
10 Q. Tuesday night?
11 A. Tuesday night.
12 Q. Thursday night?
13 A. Thursday night.
14 Q. Friday night?
15 A. Friday night.
16 MR. ANDREWS: Did we miss
17 Wednesday?
18 THE WITNESS: Yeah. Yeah, we
19 did.
20 A. Sunday night, Monday night, Wednesday
21 night, Thursday night, Friday night.
22 Q. And Tuesday night?
23 A. I missed Tuesday?
24 MR. ANDREWS: You missed
25 Tuesday.

1 J. Guzman
2 Q. We have six nights, right?
3 Is it fair to say --
4 A. I believe it's -- yeah, it's six nights
5 that I would come in.
6 Q. And perform deliveries?
7 A. Yes.
8 When I had the conversation with Syed,
9 we agreed to -- well, he agreed to -- for me to
10 come in five nights then.
11 Q. It went from six to five nights?
12 A. Yes. I did not come in on Friday,
13 Friday evening.
14 Q. That would last from about April 2013
15 until about June 2012?
16 A. Yeah, until I was there.
17 Q. This reduction in a night, is this about
18 the same time you're claiming that your route
19 changed?
20 A. No. No.
21 Q. Did this happen before Syed learned of
22 the lawsuit?
23 A. Yes.
24 Q. How did that happen?
25 A. How did that night got taken down to --

1 J. Guzman
2 Q. Yes.
3 A. I came -- I had a good relationship with
4 Syed, so I came in one day, and I asked Syed if
5 I could speak with him because I had a personal
6 situation with my son, and I asked Syed -- I
7 told Syed my son's babysitter, which was his
8 grandmother at that time, she's a little bit
9 older, was not able to take care of my son on
10 Fridays.
11 And so I asked Syed if it was possible
12 -- I asked if it was not going to put a burden
13 on the route, on, you know, getting the work
14 covered, if it was possible for I to have that
15 one day off until I can resolve the issue with
16 the babysitter since I didn't have anybody else
17 in New York that could have, you know, helped
18 with me that situation at that time, and he
19 told me the next day that it was okay.
20 MR. ANDREWS: I don't want to
21 break up your questioning. We should
22 take a break in a few minutes, but
23 please, ask your questions.
24 Q. It was your request to work one less
25 night per week?

1 J. Guzman
2 A. I did not request. I said this is the
3 situation that I have, if it doesn't, you
4 know -- I always respect Syed and the work that
5 he did there, so I asked if it did not
6 interfere, you know, it was not going to cause
7 any problem with, you know, the work --
8 because, you know, at that time, I said if it's
9 possible if I can have it. So it's not like I
10 requested and I said you must, you know.
11 I asked very nicely, and a day later, he
12 said he figured everything out. He said yes,
13 it would be okay for you come in next week, but
14 after that, you don't have to come in on
15 Fridays until you can find a babysitter.
16 Q. You wanted to work?
17 A. Yeah, I wanted to work. I just
18 couldn't. I was willing -- I wanted to work,
19 but I had that burden at that time.
20 Q. At that point, you only worked five
21 days?
22 A. Five days, yes.
23 Q. Five nights?
24 A. Five nights.
25 MR. POLLACK: We'll take a break

1 J. Guzman
2 for Mr. Andrews right now.
3 (Whereupon, a recess was taken
4 at this time.)
5 MR. ANDREWS: Mr. Pollack,
6 Mr. Guzman is prepared to tell you the
7 name of the mother of his four-year-old
8 son. As I did mention to you, however,
9 during the break, if the defendants
10 start issuing subpoenas to girlfriends
11 and boyfriends and spouses of the
12 plaintiffs, we will seek on appropriate
13 protective order, but to move this
14 process along, Mr. Guzman, if you ask
15 him, will tell you the name of the
16 mother of his four-year-old son.
17 Q. Can you please provide the name of the
18 mother of your son?
19 A. Sure. Andrea Rodriguez.
20 Q. What's her current residence?
21 A. 3760 Notch Street.
22 Q. In Macungie?
23 A. Macungie, Pennsylvania.
24 Q. Earlier, you also said, as part of your
25 claims, that you feel you were retaliated

1 J. Guzman
2 against; is that correct?
3 A. Yes.
4 Q. Can you explain what you mean by that?
5 A. Yes. When I was hired, I was
6 specifically hired to work in the city, in
7 Manhattan. Once Syed found out about that
8 there was something, you know, going on as a
9 claim, I was drastically shifted of everything
10 that I used to do. Like he would give me weird
11 routes, like, you know, Long Island, Queens,
12 Brooklyn, just different places.
13 And once they were served, I went from
14 doing those forty stops to doing three, two
15 stops in the city, one stop in one night, to
16 then a week later, Owen, which was his
17 assistant, would call me and say there's
18 nothing for you. And then I would still wait,
19 and Owen would call me early. He would make
20 sure even before I come, he would tell me
21 there's nothing for you today, and the next
22 day, there's nothing for you until one day --
23 there was one day where, you know, I did not
24 get that call. Like usually, they would call
25 me early, like 11:00 in the morning or

1 J. Guzman
2 whatever, I did not get that call. So
3 protocol, you know, drive to the facility and
4 show up for work. And when I was getting
5 there, then Owen called me and said we have no
6 work, don't come back. And I asked
7 specifically to Owen does that mean, there's no
8 work today, or what is it because, you know,
9 this has been going on -- sorry I have to turn
10 this off.
11 MR. ANDREWS: Do you want to
12 turn that off?
13 THE WITNESS: Yes. Sorry about
14 that.
15 A. I asked -- I asked, you know, what's
16 going on because it's been such a long time,
17 and I got pretty upset that day because I was
18 there almost getting to the facility, a couple
19 blocks away, and I was in traffic and
20 everything to get there from where I lived, and
21 he told me that, but then he said no, there's
22 just nothing. And he didn't say if it was for
23 that day or don't come back.
24 And then it was a point where they would
25 not call me. I would call in, you know,

[14] (Pages 50 to 53)

1 J. Guzman
2 because now I don't want to do that drive and
3 then show up and the same thing happen because
4 I didn't have money for -- to keep fueling the
5 car just to do a trip, you know, for nothing.
6 So I would call and no, we don't have nothing,
7 nothing, nothing. And in good sense, if you're
8 smart and somebody's telling you that for
9 two weeks, two weeks and a half, you know that,
10 basically, they're just saying, you know,
11 you're fired, but they don't want to say it
12 because you can't just call somebody all the
13 time and they just neglect you, neglect you.
14 Q. Did you receive any routes after Syed
15 was served?
16 A. Yes.
17 MR. ANDREWS: Objection.
18 A. Yes, I received routes after Syed was
19 served, but the routes were two stops, four
20 stops, eleven stops where -- where the amount
21 of pay for the day was more than the expenses
22 of gas.
23 Q. Do you know what day they were served?
24 A. I don't recall at this time. I don't
25 recall the exact date.

1 J. Guzman
2 Q. Do you recall the month?
3 A. No, I don't recall the month right now.
4 We can look, but I don't recall the month.
5 (Whereupon, Injunctive affidavit
6 was marked as Defendant's Exhibit 64,
7 for identification, as of this date.)
8 A. The question that you asked before, just
9 something else I could add on that I actually
10 missed.
11 Q. What question is that?
12 A. Why did I feel that I was retaliated
13 against.
14 Q. Go ahead.
15 A. Another big thing was before he found
16 out, about a month before he found out that
17 there was something, you know, boiling up as a
18 claim, I was -- one day, I came in, Syed called
19 me into the office, and he asked me that -- he
20 was looking for someone to be his assistant,
21 and he offered me the position, which at that
22 time, I did not take the position. And he was
23 offering me a position as an assistant, which
24 from what I recall, what he offered was for me
25 to come in early, set up everything, like, you

1 J. Guzman
2 know, make sure that the manifests are printed,
3 that the -- that the food was, you know,
4 getting prepared and everything. And he
5 offered me -- to pay me \$10 an hour for that
6 part of the duty, and on top of that, I would
7 have my regular route, which, at the time, I
8 did not take for the reason that it was too
9 much work, you know.
10 I always like to do the work the right
11 way. I don't want to take things that I cannot
12 do because I like to like make a commitment.
13 You know, if I do something, I want to do it
14 the right way. I don't like to slip up, and I
15 felt, at that time, doing such a long route and
16 then coming in in the morning to do that, that
17 would be like a -- very hard to do. So I did
18 not take the position at that time.
19 And where I was trying to go with that
20 is, you know, why were you offering me that
21 position that day and then once you find out
22 that there's something, now, you know -- now
23 you giving me three stops, four stops, five
24 stops. It never made sense to me.
25 Q. Now I'm going to show you a document --

1 J. Guzman
2 A. Sure.
3 Q. -- that's been marked for identification
4 as Defendant's Exhibit 64 (handing).
5 I'm going to ask you to take a look at
6 that document, and then let me know if you've
7 ever seen that document before today.
8 A. Yes, I've seen this document.
9 Q. Is that your signature on the fifth page
10 of the document?
11 A. Yes, on the right-hand side. Yes.
12 Q. Did you sign this document on
13 July 9, 2012?
14 A. I believe so, yes.
15 Q. What do you understand this document to
16 be?
17 A. It was my affidavit.
18 Q. Did you sign multiple affidavits in this
19 case?
20 A. I don't recall. I believe -- I believe
21 I did two, but I don't recall the exact amount.
22 Q. Do you remember what you were signing
23 this affidavit for?
24 MR. ANDREWS: Objection.
25 A. Right now, I don't recall. I would have

[15] (Pages 54 to 57)

1	J. Guzman	1	J. Guzman
2	to, you know, go over it with you. I do not	2	the beginning, there's a mailbox, right. So in
3	recall.	3	the mailbox, it has like the letters. So you
4	MR. ANDREWS: I just want to	4	would pick up the manifests from where that
5	emphasize, do not disclose conversations	5	mailbox is at. So when I started there, I was
6	that you've had with your attorneys.	6	handed Route P. So I would go straight in,
7	Q. Did you prepare this document?	7	just grab the keys and whatever was on that
8	MR. ANDREWS: Objection.	8	mailbox.
9	A. I did not prepare the document. Like I	9	So even though Syed would change the
10	did not write it down. I sat down with my	10	stops to other places, whatever he wants to do,
11	attorney.	11	I would always pick up the route, the paper on
12	Q. Were you with Mr. Hernandez when you sat	12	Route P. So that's why I state here that I had
13	down with your attorney?	13	Route P because I would always go and pick it
14	A. No.	14	up from that mailbox. There was nothing that
15	Q. Looking at paragraph 9 --	15	would say the name of the route. It was just
16	A. Okay.	16	the mailbox.
17	Q. -- do you see in that paragraph it	17	Q. Understood.
18	refers to a Route P?	18	Do you see paragraph 11? It says,
19	A. Yes.	19	"During this time, I typically worked six days
20	Q. Is that the route that you were assigned	20	a week".
21	to from January 2012 until about June 2012?	21	Do you see that sentence?
22	A. I believe so, yes. I believe that was	22	A. Yes.
23	the name.	23	Q. What do you mean by that?
24	Q. Is this the route that you testified can	24	A. I was explaining to you before. You
25	vary between forty and eighty stops --	25	know, I was going in in the afternoon and come

1	J. Guzman	1	J. Guzman
2	A. Yeah.	2	back -- come out in the morning. So, you know,
3	Q. -- on a night?	3	I would not finish my work until the morning,
4	A. Yes.	4	so it's like six days.
5	Q. Is there a particular night during the	5	Q. You did testify earlier that it was
6	week that it would have forty stops as opposed	6	reduced to five days at some point, correct?
7	to eighty stops?	7	A. Yes. Yes.
8	A. Yes.	8	Q. You didn't work six days a week for the
9	Actually, I'll let you know how the week	9	entirety of January to early June?
10	works. Sunday through Wednesday was like super	10	MR. ANDREWS: Objection.
11	busy. That was when there was the most stops.	11	Q. Is that a fair statement?
12	And then like Thursday and Friday it was a bit	12	MR. ANDREWS: Objection.
13	less.	13	A. It -- it depends the way you look at it.
14	Q. Looking at paragraph 10, it says,	14	Q. You testified earlier, at some point, it
15	"Throughout the first half of 2012, from	15	was reduced from six nights to five nights,
16	January to approximately early June, I handled	16	correct?
17	Route P on a full-time basis and delivered	17	A. Uh-huh.
18	meals to The Fresh Diet Inc.'s customers in	18	MR. ANDREWS: Objection.
19	Lower Manhattan".	19	Q. You said that that was approximately
20	Do you see that?	20	three months after you began.
21	A. Yes.	21	A. More or less, yes.
22	Q. Is that the time that you had only	22	Q. Was the five nights the amount of nights
23	worked the Route P route?	23	you typically worked until the end of the time
24	A. The P -- the thing with the P route is	24	you worked for The Fresh Diet?
25	that it would be in a mail -- like I said in	25	A. Yeah, until the situation, which it

[16] (Pages 58 to 61)

1 J. Guzman
 2 wasn't like the whole three months because, you
 3 know, after that situation, which started a
 4 month prior to -- like almost a month -- a
 5 couple weeks prior to the time that they were
 6 served --
 7 Q. Looking at paragraph 12, it says,
 8 "During this time, I typically worked eight to
 9 ten hours a day, and sometimes up to
 10 twelve hours a day".
 11 Do you see that?
 12 A. Yes.
 13 Q. What are those hours based on?
 14 A. Those hours -- I based those hours on
 15 the time that I came in to the time that I
 16 returned to the facility. And the reason why I
 17 put here eight, ten, twelve because I wanted to
 18 be the most accurate as possible. You know, I
 19 did not want to say -- I did not want to
 20 exaggerate, just be as accurate as possible
 21 because it varied depending on the route.
 22 Q. When would it be up to twelve hours a
 23 day?
 24 A. That's when I had like a lot of stops,
 25 when I had the seventy stops, because it would

1 J. Guzman
 2 take me about ten hours on the route, and then
 3 like two hours, give or take two hours, you
 4 know, between the packing and the coming back
 5 and everything, you know, the entire operation
 6 from the time that I came in to work until the
 7 time that I would leave the facility.
 8 Q. Did you always pack meals?
 9 A. Not all the time. Not every single
 10 time.
 11 Q. Did you always return to the facility
 12 when you were done?
 13 A. Yes. That's mandatory for me.
 14 Q. How far was your residence from the
 15 facility, driving time?
 16 A. I would say two times because I would
 17 say in the -- you know, the afternoon, it's
 18 rush hour. In the afternoon, anywhere between
 19 thirty minutes to an hour. In the evening, it
 20 was quick, about, I would say, fifteen to
 21 twenty minutes. It was no -- no -- like not so
 22 much traffic unless I finished real late.
 23 Q. It would take you about thirty to
 24 sixty minutes to get to the facility?
 25 A. In the afternoon because of the traffic

1 J. Guzman
 2 on the Belt Parkway.
 3 Q. Then about fifteen to twenty minutes to
 4 get from the facility --
 5 A. In the evening.
 6 Q. -- back to your home --
 7 A. Yeah, in the morning.
 8 Q. -- after you were done?
 9 A. Uh-huh.
 10 Q. The next paragraph, paragraph 13 --
 11 A. 13, yes.
 12 Q. -- says that you, typically, made about
 13 800 per week.
 14 Do you see that?
 15 A. Yes.
 16 Q. What was that based on?
 17 A. The amount of stops.
 18 Q. Did your pay vary from week to week?
 19 A. Yes.
 20 Q. Looking down at paragraph 20, it says,
 21 "I would not have been able to support myself
 22 and my family by working a part-time schedule".
 23 Do you see that?
 24 A. Yes.
 25 Q. What do you mean by a "part-time

1 J. Guzman
 2 schedule"?
 3 A. What I mean there, based on, you know,
 4 the bills and stuff that we had, like if I was
 5 working part-time -- what a part-time job pay
 6 you, around \$200, \$180, more or less? I
 7 wouldn't be able to cover our bills if I was
 8 making around \$180 at that time.
 9 Q. Had you looked for any part-time
 10 positions in January 2012?
 11 A. No. After -- after I started working
 12 with Fresh Diet, I considered myself a
 13 full-time employee. I did not have any
 14 intentions of working anywhere else at that
 15 time.
 16 Q. Did you look for any other positions
 17 between November 2011 and January 2012?
 18 A. Yes.
 19 Q. Did you apply for any other positions
 20 during that time?
 21 A. Yes. I applied for different positions
 22 in New York. I even tried doing real estate.
 23 I was taking the course for real estate at that
 24 time, tried for that.
 25 Q. What positions did you apply for?

[17] (Pages 62 to 65)

1 J. Guzman
2 A. I applied for like supermarkets or
3 retail stores at the time and also at recording
4 studios since I have an audio engineering
5 degree at that time.
6 Q. Were you offered any of those positions?
7 A. Yes, I was.
8 Q. Was there a reason that you didn't take
9 the positions?
10 A. Yes. It was -- the pay was too low, I
11 believe, for what I -- you know, what I need,
12 more or less, for my family.
13 Q. Do you remember what pay was offered for
14 any of those positions?
15 A. It was \$8 an hour.
16 Q. Do you remember which one was offering
17 \$8 an hour?
18 A. It was Pathmark supermarkets.
19 Q. Looking at paragraph 2 --
20 A. 2?
21 Q. 22. I apologize.
22 In that paragraph, you describe a
23 conversation you had with Syed, correct?
24 A. Yes.
25 Q. Do you remember when that conversation

1 J. Guzman
2 occurred?
3 A. Right now, I don't recall the exact
4 date.
5 Q. Looking back at paragraph 21, there's a
6 reference to this conversation happening in or
7 about late May 2012.
8 Do you see that?
9 A. Yes, I see it.
10 Q. Is this when the conversation that you
11 were referring to earlier occurred with Syed?
12 A. I don't recall right now. I can't give
13 you an answer of something I can't remember
14 right now, you know, the date. I can't
15 remember the date, the exact date. If it says
16 it here, it must have been around that time,
17 but I don't have the exact date with me right
18 now in my mind.
19 Q. Sometime in late --
20 A. Yeah.
21 Q. -- May 2012?
22 MR. ANDREWS: Objection.
23 A. I would say that.
24 Q. During this conversation in paragraph
25 22, you said, "I told Mr. Hussain that I did

1 J. Guzman
2 not know anything about any potential lawsuit".
3 Do you see that?
4 A. Yes.
5 Q. Is that a true statement?
6 MR. ANDREWS: Objection.
7 THE WITNESS: Can I answer or
8 no?
9 MR. ANDREWS: If you can
10 explain, you can answer.
11 THE WITNESS: Yeah, I'll
12 explain. I remember the conversation.
13 A. I came in to return the bags like normal
14 every day, and when I come in, I do everything,
15 and I usually, you know -- I'm very polite, so
16 I usually would tell everyone that was there
17 have a good day or whatever and go home.
18 But that day, Syed asked me that he
19 wanted to talk to me, and we were in his
20 office, and he asked me do you know anything
21 about Fernando talking to drivers about a
22 potential lawsuit or anything like that, and at
23 that time, I told him no, I don't know
24 anything, and I went home. And the reason
25 being is I knew that if Syed finds out, given

1 J. Guzman
2 his personality, he would start, you know,
3 talking bad because that was like the way he
4 talked, you know, using curse words and stuff
5 like that. So I just didn't want to get into
6 the conversation, so I said no, I don't know
7 anything and just went home.
8 Q. Did you know about a potential claim at
9 that time?
10 A. Yes.
11 Q. How did you know about a potential claim
12 at that time?
13 A. I'm part of that claim.
14 Q. Who had mentioned the claim to you
15 before you sat down with Syed that day?
16 A. Who -- say that question again.
17 Q. Was there any particular person who had
18 mentioned this particular lawsuit to you before
19 you sat down with Syed that day?
20 A. (No verbal response.)
21 Q. How did you learn of the potential
22 lawsuit?
23 A. I was the one that -- that went to do
24 the lawsuit, the complaint. I was complaining.
25 Q. It was you, individually?

[18] (Pages 66 to 69)

1 J. Guzman
 2 A. I was -- well, it was me, and it was
 3 Fernando, but I was -- I was the one that --
 4 that -- that took action. I was the one who --
 5 MR. ANDREWS: Yale's question is
 6 when did you first learn that a lawsuit
 7 might be filed.
 8 THE WITNESS: When I did first
 9 learn?
 10 MR. ANDREWS: Yes. I think
 11 that's what Yale's getting at.
 12 A. Oh, that's the question? I don't recall
 13 the exact date right now that the lawsuit -- I
 14 sat down with my attorney before -- prior to
 15 this date, but I did not know that there was
 16 something being filed in court. You know, I
 17 don't know the exact date.
 18 Q. Did you believe you were not being paid
 19 properly in May 2012?
 20 A. For the overtime, yes.
 21 Q. You had that personal belief?
 22 A. Yes, I had that personal belief, at that
 23 time, that I was not getting paid the overtime
 24 because of all the work that was -- had to be
 25 done, preparing to do the route, after the

1 J. Guzman
 2 route, and the route taking such a long time to
 3 complete.
 4 Q. What did you believe you were entitled
 5 to?
 6 A. Overtime for the time that I was not
 7 compensated for.
 8 Q. Do you understand what an independent
 9 contractor is?
 10 MR. ANDREWS: Objection.
 11 A. (Witness shakes head.)
 12 Q. Do you?
 13 A. No.
 14 Q. You were never paid an hourly wage for
 15 the time you performed deliveries for The Fresh
 16 Diet; is that correct?
 17 MR. ANDREWS: Objection.
 18 A. No, I was never paid hourly.
 19 Q. When did you first believe that you were
 20 being paid improperly?
 21 A. It was about a month and a half after
 22 being employed. After like a month and a half
 23 of being employed, I felt that I was not being
 24 compensated, for the work that I did, the
 25 proper way.

1 J. Guzman
 2 Q. What prompted you to go to an attorney?
 3 A. Just the fact that I was not getting
 4 paid the way that I thought I got hired because
 5 I filled out an appointment application with
 6 Syed, and then after -- after working there
 7 and, you know, noticing that, you know -- that
 8 I had like -- you know, I had to pay my own
 9 taxes, stuff like that, it was like -- I never
 10 worked anywhere else where I had to pay my own
 11 taxes. It was deducted from -- from my check.
 12 So -- and also, the time -- you know, not being
 13 compensated for the time that I was doing the
 14 work before and -- before and after the route,
 15 the actual route.
 16 Q. Do you see paragraphs 25 and 26 refer to
 17 a conversation you had with Owen Dacres in
 18 early June 2012?
 19 A. Yes.
 20 MR. ANDREWS: Is that Dacres?
 21 Do you know how that's pronounced.
 22 THE WITNESS: No. I never knew
 23 his last name. I just know Owen.
 24 MR. ANDREWS: Okay.
 25 Q. Is it your contention that immediately

1 J. Guzman
 2 after this incident, Route P was taken away
 3 from you?
 4 A. Yeah. After that incident, that's when
 5 like things got really bad. You know, that's
 6 when I was getting like three stops, five
 7 stops, seven stops.
 8 Q. The following paragraph, paragraph 28,
 9 says, "Specifically, Syed Hussain began
 10 assigning me to routes that I had never covered
 11 before, such as routes in Queens, Brooklyn and
 12 Long Island".
 13 Do you see that?
 14 A. Yes.
 15 Q. Do you remember the names of the routes
 16 that you were assigned?
 17 A. No. Like I said, I would pick it up
 18 from that one mailbox, so I don't remember, at
 19 the moment, the name of the route.
 20 Q. Is it your testimony that these routes
 21 only had three to four stops?
 22 A. Well, the -- when it first was switched
 23 over, I had like thirty stops, like when I
 24 first did it. It was like the first couple of
 25 days. And then it just -- all of a sudden,

[19] (Pages 70 to 73)

1	J. Guzman	1	J. Guzman
2	just got like -- I didn't know where I was	2	for identification, as of this date.)
3	going to be. It was just, you know, hey, we	3	Q. Now I'm going to show you a document
4	don't have anything, we just have three stops	4	that's been marked for identification --
5	for you, go do them here and there.	5	A. Should I close this up?
6	Q. These stops that you referred to for the	6	Q. You could just close it, yes, and just
7	routes in Queens, Brooklyn, and Long Island,	7	hold it there. We may go back to it.
8	those had about thirty stops?	8	A. Okay.
9	A. It had about thirty stops for -- for	9	Q. -- as Defendant's Exhibit 65, titled
10	about a week or so, and then it would just --	10	"Affidavit of Plaintiff Juany Guzman in Support
11	after that, it was just like nothing else. It	11	of Preliminary or Conditional Collective Action
12	was nothing. I was just two or three stops	12	Certification (Notice)".
13	that I got.	13	I'm going to ask you, before today, if
14	Q. Were you compensated the same way for	14	you've seen this document (handing).
15	the routes that you did in Queens, Brooklyn,	15	A. Yes.
16	and Long Island as compared to the compensation	16	Q. Is that your signature on the third page
17	you received for the routes that you performed	17	of the document?
18	in Manhattan?	18	A. Yes.
19	A. No. No. It -- it -- the way that I was	19	Q. Did you sign the document on
20	compensated for Manhattan was \$3 per stops as	20	September 24, 2012?
21	we said before. For the one in -- anything in	21	A. Yes.
22	Queens, Brooklyn, Long Island, it was \$4.	22	Q. What is your understanding of this
23	Q. \$4 per stop?	23	document?
24	A. Yeah.	24	MR. ANDREWS: Objection.
25	Q. Was there also mileage?	25	A. It's another affidavit.

1	J. Guzman	1	J. Guzman
2	A. No, no mileage. I never received	2	Q. Looking at paragraph 2, it says, "My job
3	anything for mileage.	3	responsibilities as a driver/food delivery
4	Q. Paragraph 32 says, "The Fresh Diet Inc.	4	employee consisted exclusively of showing up to
5	has not given me any work at all since	5	The Fresh Diet Inc.'s Brooklyn facilities,
6	June 26, 2012".	6	receiving instructions as to my delivery
7	Do you see that?	7	routes, obtaining prepared meals, and
8	A. Yes.	8	personally delivering them to The Fresh Diet's
9	Q. What work did you perform on	9	customers throughout the New York City tristate
10	June 26, 2012?	10	region, including locations in New York,
11	A. I don't recall. That was a long time	11	New Jersey, and Connecticut".
12	ago.	12	Do you see that?
13	Q. This reduction in stops, this was only	13	A. Yes.
14	for the period of June 2012?	14	Q. Did you ever perform deliveries in
15	MR. ANDREWS: Objection.	15	New Jersey?
16	A. Yeah. It was -- it was -- it was right	16	A. No.
17	after -- it was like a week -- right after they	17	Q. Did you ever perform deliveries in
18	got the -- they got served. I remember -- I	18	Connecticut?
19	don't know the exact date, but I remember that	19	A. No.
20	because I was in the office when that happened,	20	Q. The following sentence says, "After
21	so I remember that it was like two weeks -- a	21	completing my meal deliveries, I would have to
22	couple of weeks after they received that letter	22	return to The Fresh Diet's Brooklyn facilities
23	that they were served.	23	to report back, complete required paperwork,
24	(Whereupon, Collective affidavit	24	and return empty bags".
25	was marked as Defendant's Exhibit 65,	25	Do you see that?

[20] (Pages 74 to 77)

1 J. Guzman
 2 A. Yes.
 3 Q. When you say "report back," what do you
 4 mean by that?
 5 A. We -- when I get back -- I'm going to
 6 walk you actually through it. When I get back,
 7 all the empty bags that are in the vehicle, I
 8 would have to take them out, and then there
 9 would be like ice packs inside, and I would
 10 have to put them in the fridge, take the ice
 11 pack and put them there, and then take the bag
 12 and any garbage or anything that's in there,
 13 throw it in the garbage, and then put the bags
 14 in the bin for the bags to get clean.
 15 After I would do that, I take my
 16 manifest, I looked over it, make sure that
 17 everything was, you know, written down
 18 correctly, the time and everything, and I would
 19 count how many bags I returned, and I had to
 20 count how many deliveries that I did to make
 21 sure that everything was done correctly.
 22 Then I would place the manifest on the
 23 bin that Syed had, and under that, there was
 24 like a sign-in sheet, so you would sign -- you
 25 would put like the time you got to the

1 J. Guzman
 2 facility, put it there. And then after that,
 3 that was it. Then you can go home.
 4 Q. Before returning to the facility, did
 5 you report how many bags you had dropped off
 6 for the night?
 7 A. Yes. We would send a text reporting how
 8 many bags were picked up.
 9 Q. When would you send that text?
 10 A. At the time that we were done with the
 11 last delivery before -- Syed specifically
 12 wanted -- wanted it at that time that we
 13 performed the last delivery before we even got
 14 to the warehouse.
 15 Q. Do you still have those texts?
 16 A. No. I -- I don't have that phone.
 17 Q. Did you give those texts to your
 18 attorney before you switched phones?
 19 A. I don't recall. I don't believe so, but
 20 I don't recall right now if I did.
 21 Q. When did you get a new phone?
 22 A. Well, this is my second phone. I got a
 23 different phone like after that, like a couple
 24 of months after all of this stuff, like
 25 probably September of that year, and then I

1 J. Guzman
 2 just got this phone now.
 3 Q. What did you do with the phone that you
 4 had?
 5 A. I lost it. I lost that phone.
 6 Q. Where did you lose it?
 7 A. I don't recall.
 8 Q. Did you have the same phone from January
 9 2012 to June 2012?
 10 A. January to June? No. I had a -- I had
 11 a -- what was it? I believe I had an iPhone,
 12 and then while I was working at Fresh Diet, I
 13 replaced it with a Blackberry, and then the
 14 Blackberry was the one that I misplaced.
 15 Q. When did you have the Blackberry from?
 16 A. I don't recall right now. It was during
 17 the time I was working there at Fresh Diet.
 18 Q. Would that Blackberry have the texts
 19 that you're referring to?
 20 MR. ANDREWS: Objection.
 21 A. I don't remember. It -- I don't know if
 22 it would have it still stored in the phone. I
 23 don't remember, but I don't have either phone.
 24 Q. Going back to the affidavit, did you
 25 read it before you signed it?

1 J. Guzman
 2 A. Yeah, I read over it but, you know, very
 3 briefly, just go over it after I went over it
 4 with my attorney.
 5 Q. Do you know if anyone else signed a
 6 similar document to this one?
 7 A. No, I don't.
 8 MR. ANDREWS: Objection.
 9 A. I don't know that.
 10 Q. Did you make sure that all the
 11 statements were accurate before you signed it?
 12 MR. ANDREWS: Objection.
 13 A. I -- I -- more or less, yes.
 14 Q. Are there any inaccuracies that you now
 15 see in this document?
 16 MR. ANDREWS: Objection.
 17 A. I see one.
 18 Q. Being?
 19 A. The Jersey and Connecticut.
 20 Q. What's inaccurate about that?
 21 A. Jersey and Connecticut. I never --
 22 Q. That you never performed deliveries
 23 there?
 24 A. No.
 25 Q. Looking at paragraph 4, do you see where

[21] (Pages 78 to 81)

1 J. Guzman
2 it says, "The Fresh Diet's Brooklyn facility
3 included a kitchen or food preparation area
4 used by the kitchen staff, and a pickup and
5 return area used by the drivers and food
6 delivery employees"?
7 A. Uh-huh.
8 Q. Were there separate areas for the
9 drivers and the kitchen staff?
10 A. I would -- I would try to draw up a
11 picture to better understand. The facility,
12 when you come in, right, it has like a driveway
13 with the trucks or car, whatever you come in.
14 You would have, on the right-hand side, the
15 kitchen. On the left-hand side, there's
16 freezers. So when the food was prepared, it
17 was brought into the freezer to get packed, and
18 then that's where we would pick up the food
19 from, that freezer. And then if you go -- so
20 it's right, left (indicating). If you go past
21 that, then that's where the office were, so
22 that's basically the facility.
23 MR. ANDREWS: I just want to
24 stress, the court reporter takes
25 everything down that you say verbally.

1 J. Guzman
2 THE WITNESS: Yes.
3 MR. ANDREWS: So hand gestures
4 and stuff are not recorded. So to the
5 extent that you can verbalize your
6 responses, that's what she can take
7 down.
8 MR. POLLACK: That was a
9 sufficient explanation.
10 Q. Looking at paragraph 7, the second
11 sentence, it says, "I always had to do what
12 Syed Hussain or persons directly under his
13 supervision directed me to do".
14 Do you see that?
15 A. Yes.
16 Q. What other individuals are you referring
17 to in that sentence?
18 A. That would be Owen. Owen was the --
19 Syed's assistant. So I was specifically told
20 by Syed to do what he says or what Owen told me
21 to do.
22 Q. Were there any other persons?
23 A. I -- not that I know of, but that's who
24 I had to report to and make sure that I did,
25 you know, the work the way they wanted me to

1 J. Guzman
2 perform the work.
3 Q. The next sentence in that paragraph, 7,
4 says, "Indeed, I believed that I would have
5 been reprimanded and possibly disciplined or
6 terminated if I did not follow their
7 instructions".
8 Do you see that?
9 A. What number was that?
10 Q. 7.
11 MR. ANDREWS: The last sentence.
12 A. Okay. I see it.
13 MR. ANDREWS: Here, this
14 sentence (indicating).
15 THE WITNESS: Okay. I see it.
16 A. Yes, I believe so.
17 Q. Were you ever disciplined or
18 reprimanded?
19 A. I was not.
20 Q. What instructions are you referring to
21 in that sentence?
22 A. I'm referring to -- there is -- the way
23 that Syed treated everyone as a group, you
24 know, the way that -- that -- if you had
25 misdeliveries or you did not put a -- if there

1 J. Guzman
2 was a bag that the kitchen forgot to put a bag
3 tie on and you don't do it, he would dock you
4 money from your pay. Things of that nature,
5 you know, as that relationship with the
6 employees that he had as a manager.
7 But from my instance, I believe that if
8 I did not do, you know, my work the way that he
9 wanted me to do it, you know, I would be
10 terminated, or I would get, you know, in
11 trouble because that's what happened with other
12 drivers that -- you know, any situation they
13 had, they would get docked money or that stuff.
14 I was fortunate for that not to happen
15 because, like I said in the beginning, I tried
16 to be very respectful, even at a point where he
17 had a nasty phone call to me because I left
18 behind one -- one of the deliveries, meals, and
19 even though he curse word and, you know, called
20 my mother whatever he did and all that stuff, I
21 maintained myself, you know, very calm because
22 I don't think that's the right way to speak to
23 someone, and I never got in trouble because I
24 always -- I didn't not give him attitude. I
25 would always just be polite, but it wasn't like

[22] (Pages 82 to 85)

1 J. Guzman
2 that for everyone.
3 Q. Who was it not like that for?
4 A. A lot of people. A lot of people.
5 Q. Like who?
6 A. A lot. Some of them, I don't even know
7 their names because I did not mingle with them,
8 but when we had meetings, you know, there was
9 like -- which we had meetings like every couple
10 weeks with Syed that he was -- mandatory for us
11 to come into that meeting before we go to do a
12 route. There was argument. I would just stay
13 quiet in that entire time and not even comment
14 on anything.
15 Q. Do you know anyone whose pay was docked
16 for not following instructions?
17 A. I heard -- because I like to give the
18 facts. I did not see it with my eyes. Like I
19 did not see the paycheck where somebody got
20 docked. I would hear them argue with Syed for
21 like hey, Syed, why did you dock me this. Oh,
22 remember you this and you BS and, you know,
23 stuff like that. So by the time I was in the
24 office, I would hear those conversations
25 between him and other drivers, but I did not

1 J. Guzman
2 personally, with my eyes, see a document
3 showing that someone got docked.
4 Q. Did anyone ever tell you that their pay
5 was docked?
6 A. Fernando did because he was one of the
7 people that I spoke with, which probably the
8 only one that I really had a conversation with
9 there.
10 MR. ANDREWS: Could we take a
11 two-minute break just for me?
12 MR. POLLACK: That's fine.
13 (Whereupon, a recess was taken
14 at this time.)
15 (Whereupon, Class action
16 affidavit was marked as Defendant's
17 Exhibit 66, for identification, as of
18 this date.)
19 Q. I'm now going to show you a document
20 that's been marked for identification as
21 Defendant's Exhibit 66 (handing).
22 I'm going to ask you to take a look at
23 that document, and let me know if you've ever
24 seen that before today.
25 A. Yes, I've seen this document before.

1 J. Guzman
2 Q. Is that your signature on the fifth page
3 of the document?
4 A. Yes.
5 Q. Did you sign that on February 6, 2013?
6 A. Yes.
7 Q. Do you know what this document is?
8 A. I believe this is an affidavit
9 supporting a -- I don't know, some documents or
10 something. I know it's an affidavit.
11 Q. Looking at paragraph 4, it says, "I
12 previously have sworn to two affidavits in this
13 action. I swore to an affidavit on
14 June 26, 2012 in support of a motion for
15 preliminary injunctive relief due to the acts
16 of retaliation directed against me by the
17 defendants for participating in this action,
18 and I also swore to an affidavit on
19 September 24, 2012 in support of Plaintiff's
20 motion for preliminary or conditional
21 collective action certification".
22 Do you see that?
23 A. Yes.
24 Q. Is Defendant's 64 the first affidavit
25 you're referring to in that sentence, being the

1 J. Guzman
2 one sworn to on June 26, 2012?
3 A. This one right here (indicating)?
4 Q. Yes, Defendant's 64.
5 A. It's July 9th.
6 Q. Do you know what June 26, 2012 affidavit
7 you're referring to?
8 A. No.
9 Q. Do you believe that there's another
10 affidavit you signed before the three that are
11 in front of you, which are marked defendant's
12 64, 65, and 66?
13 A. No. I don't recall signing anything
14 else.
15 Q. Do you believe that the second affidavit
16 referred to in that sentence, being sworn to on
17 September 24, 2012, is the one before you as
18 Defendant's Exhibit 65?
19 A. Yes, Exhibit 65, that's correct.
20 Q. Looking at paragraph 8 --
21 A. 8, okay.
22 Q. -- it says, "Throughout my employment, I
23 often worked significantly in excess of
24 forty hours a week, yet was never paid overtime
25 compensation of one and one-half times my

[23] (Pages 86 to 89)

1 J. Guzman
 2 regular rate of pay".
 3 Do you see that?
 4 A. Yes.
 5 Q. What do you mean by that?
 6 A. I meant --
 7 MR. ANDREWS: Objection.
 8 A. I just meant that I worked over
 9 forty hours, and I did not get compensated for
 10 anything over forty hours.
 11 Q. How many hours over forty did you work?
 12 A. I would have to do the math. I don't
 13 recall right know. I would have to sit down
 14 and do the math.
 15 Q. Can you do the math right now if we took
 16 a minute and waited for you to do so?
 17 A. Yeah, we can go over it. I'm going
 18 to -- because the thing is, I'm not going to
 19 have right -- you know, it's been like a long
 20 time, so I'm not going to have like an exact
 21 amount, but I'm going to try to be as, you
 22 know, close to what it was.
 23 Do you have a paper and pen to write it
 24 down?
 25 MR. ANDREWS: Do you need a

1 J. Guzman
 2 calculator?
 3 THE WITNESS: No. It's simple
 4 math.
 5 Q. Is this fine (handing)?
 6 A. Yes, just to do day by day.
 7 Q. You testified that the hours would have
 8 been similar from January 2012 to April 2012;
 9 is that correct?
 10 A. Yeah. That time was very -- there was
 11 not changes. It was like very steady. The
 12 decline in hours was after the situation we
 13 discussed before.
 14 MR. ANDREWS: Instead of writing
 15 on a Post-it, why don't you write on an
 16 eight-and-a-half-by-eleven piece of
 17 paper?
 18 A. Okay. I'm going to put dates, like, you
 19 know, go through the dates so we can kind of
 20 figure it out.
 21 So it would be Sunday. Sunday,
 22 generally, was one of the busiest days of the
 23 week, so it's going to be on the top end. So
 24 doing the route on Sundays would be -- from the
 25 time I -- from the time I started the route to

1 J. Guzman
 2 finished the route, it would be about ten hours
 3 for Sundays.
 4 Q. Okay.
 5 A. Because it was like the heaviest day.
 6 MR. ANDREWS: Is red pen okay?
 7 MR. POLLACK: It's fine.
 8 MR. ANDREWS: As long as we can
 9 photocopy it.
 10 A. Then Monday was still a similar day. It
 11 was still busy that day, so I would put the
 12 same.
 13 Q. Do you know what hours you're referring
 14 to?
 15 A. Yes. I'm going to put it here
 16 (indicating).
 17 Q. Okay.
 18 A. What I'm trying to put here, it's the
 19 hours from the time that I started the route to
 20 finishing the route when I got back to the
 21 facility.
 22 Q. That's fine.
 23 A. Yes. So I'm going to write it here
 24 actually. Well, I'll write it at the end.
 25 Tuesday, it was still -- it was like

1 J. Guzman
 2 Tuesday to Wednesday was busy. After that, it
 3 was slow, kind of slow. So I would say here it
 4 would be about the same thing. Then after
 5 this, it would be like slower. Then Wednesday,
 6 it -- I would say it would be around seven to
 7 eight hours depending. Some -- it's weird
 8 because there was some Wednesdays where it was
 9 still busy, but it wasn't like every single
 10 Wednesday. So I don't know like what would be
 11 more accurate to write because it wasn't really
 12 all the time that it was seventy stops.
 13 Q. Okay.
 14 A. So I would just say seven to eight just
 15 to --
 16 Then Thursdays -- Thursdays -- Thursday
 17 was like seven hours, I would say. Like seven
 18 hours.
 19 But this here is from the time -- I'll
 20 write it here, from the start of deliveries or
 21 route to returns of bags and documents. The
 22 only thing that I don't have here is when I got
 23 to the facility and we had to pack or wait for
 24 the food because that's like a time that --
 25 sometimes it was forty-five minutes, but most

[24] (Pages 90 to 93)

1 J. Guzman
 2 of the time, it was like an hour and a half.
 3 You know, it varies. This is more something
 4 that I can actually, you know, calculate.
 5 And then Fridays -- Fridays was the same
 6 thing, around seven hours. That was for, we
 7 said, January through three months, February,
 8 March, I would say, April. So that would be
 9 through April because, remember, then after
 10 that, I had that one day, Friday, that I did
 11 not perform the duties. So after that time,
 12 after April, then we can eliminate the Friday.
 13 Q. What would the total hours be from
 14 January through April?
 15 A. So here -- but this is for the route. I
 16 haven't added the time that --
 17 Q. I only want the route right now.
 18 A. Okay. It would be ten and ten, ten is
 19 thirty. Fourteen. It would be around
 20 fifty hours, fifty-one hours, give or take.
 21 Q. How much additional time would you add
 22 on to that for predelivery?
 23 A. The predelivery for the week?
 24 Q. Yes.
 25 A. It was -- for this time, it was six

1 J. Guzman
 2 days. I can -- I'm going to do like an hour
 3 and a half just to be in the middle of the
 4 actual time. So it would be three, six, about
 5 nine more hours. So I would say like a
 6 total -- so plus nine hours of pre -- what did
 7 you call it, pre what?
 8 Q. Predelivery.
 9 A. Predelivery. A total of about sixty
 10 hours, give or take, more or less. That was at
 11 that time.
 12 Q. From April to early June, what would it
 13 be?
 14 A. From -- so let's do here -- April to
 15 June, it would be sixty minus, I would say,
 16 like eight hours, I would say, for example.
 17 So, I would say, it's like fifty-two to
 18 fifty-one hours or fifty-two hours, for
 19 example, because we would take off the seven
 20 hours plus like an hour or hour and a half for
 21 that day. So that's more or less what I can
 22 come up with that's more accurate, not
 23 exaggerating or going, you know, low, just the
 24 ballpark.
 25 MR. POLLACK: I'm going to go

1 J. Guzman
 2 make a copy of this.
 3 MR. ANDREWS: And we'll mark it
 4 as an exhibit so we know what we're
 5 talking about.
 6 (Whereupon, Handwritten
 7 calculations by Mr. Guzman was marked as
 8 Defendant's Exhibit 67, for
 9 identification, as of this date.)
 10 Q. I'm now going to show you what's been
 11 marked for identification as Defendant's
 12 Exhibit 67, and I'm going to ask if that's the
 13 calculations that you just handwrote during
 14 today's deposition (handing).
 15 A. Yes.
 16 Q. Looking at this, we're talking about
 17 sixty hours per week from January 2012 through
 18 April 2012?
 19 A. Uh-huh.
 20 Q. Was that a yes?
 21 A. Yes.
 22 MR. ANDREWS: Don't say uh-huh.
 23 Say yes.
 24 THE WITNESS: It's nature.
 25 Q. Fifty-two hours a week from April 2012

1 J. Guzman
 2 to June 2012?
 3 A. Until the situation.
 4 Q. Until early June 2012?
 5 A. Yes.
 6 Q. You did not perform meal packing every
 7 day, correct?
 8 A. No, no meal packing every day.
 9 Q. There were some days that everything was
 10 prepared for you to just put the bag in your
 11 car?
 12 MR. ANDREWS: Objection.
 13 A. Yes and no, and I will explain. It's
 14 better to explain it.
 15 Even though, let's say, the meals were
 16 packed, they were in the freezer, but it's like
 17 all the routes, everywhere. So when I would
 18 come in, even if, best case scenario -- best
 19 case scenario, all the food was prepared and it
 20 was packed and it was in the freezer, each bag
 21 has a client's name and address and the
 22 client's ID number. So when you have the
 23 manifest, you have to go and find it, and,
 24 let's say, you have fifty bags, or forty bags,
 25 you might find ten, fifteen of them on one

[25] (Pages 94 to 97)

1 J. Guzman
 2 rack, but then you would have to search the
 3 entire place to find -- in between so many
 4 bags, like 500-600 bags to find your client,
 5 the client bag. So even -- even -- best case
 6 scenario, you still would have to, you know,
 7 spend there a good amount of time looking for
 8 every single delivery bag that you have for the
 9 route.
 10 Q. If the food was already prepared, the
 11 only other duty that there would be would be to
 12 search for the bags?
 13 A. Search for the bags and make sure the
 14 ties were on.
 15 Q. There were times that the bags were
 16 packed --
 17 A. Yes.
 18 Q. -- and the ties were on?
 19 A. Yes.
 20 Q. In those instances, there wouldn't be an
 21 hour and a half of predelivery work?
 22 MR. ANDREWS: Objection.
 23 A. Yeah, there would be, because I'm being
 24 very generous. I'm actually just cutting it,
 25 more or less, like, you know, down on those

1 J. Guzman
 2 numbers. I'm not trying to exaggerate on those
 3 numbers. I'm trying to keep it very, very,
 4 very low as much as I can because the -- just
 5 looking for the bags would take you about,
 6 minimum, forty-five minutes, just looking for
 7 the bags, you know, not counting getting the
 8 manifests and sorting out the stops, you know.
 9 If -- you know, if we had other stops
 10 that I did not recognize that were new to the
 11 route, I would have to sit down on the computer
 12 and, more or less, map it out. So -- so -- so
 13 less than one hour and a half? No. No.
 14 There's no way I would come in there, fifteen
 15 minutes and I'm out or -- there's no way.
 16 Minimum of an hour and a half.
 17 Q. Other than searching for the bags, if
 18 the bags were packed and tied already, it's
 19 your testimony that that may take up to
 20 forty-five minutes for the search?
 21 MR. ANDREWS: Objection.
 22 A. Yeah.
 23 There was times, a lot of times -- this
 24 was one of the things that would upset me the
 25 most. It's that you wouldn't find certain

1 J. Guzman
 2 clients' bags. Like it's -- somewhere in
 3 between cooking it and getting it to the
 4 freezer, I don't know where they would put it.
 5 So then I would have to go to Syed or to Owen,
 6 and I would have my bags packed, but we would
 7 have to wait so see if they would prepare it or
 8 find it. So -- so in your best case scenario,
 9 you would spend an hour and a half, best case
 10 scenario.
 11 Q. Looking at paragraph 9, it says that you
 12 interacted with other driver/food delivery
 13 employees on a daily basis.
 14 Do you see that?
 15 A. Yes.
 16 Q. Are there any particular individuals
 17 that you interacted with on a daily basis?
 18 A. No.
 19 MR. ANDREWS: Name as many as
 20 you can think of. If you can think of
 21 names, name them.
 22 A. Well, Juan Correa. This is such a long
 23 time ago. Fernando Hernandez. There was a
 24 gentleman called Alex. There was another
 25 gentleman by the name of Danny. There was

1 J. Guzman
 2 another gentleman by the name of Junior.
 3 That's what I can recall for -- there are more
 4 but -- oh, Nafis. Nafis. Syed's uncle, which
 5 I do not recall his name because everyone would
 6 call him Uncle. Syed's Uncle. That's --
 7 that's what I can recall for now. There's a
 8 lot more, but I just don't recall the names
 9 right now. I can see the faces, but I can't
 10 recall the names.
 11 Q. Were any of these individuals at the
 12 facility before you arrived?
 13 A. Usually -- usually -- yeah. Sometimes,
 14 yes. Sometimes we arrived at the same time.
 15 Sometimes -- I can recall Correa was there
 16 always very early.
 17 Q. Before you?
 18 A. Yeah, like probably five, ten minutes.
 19 You know, I would drive up, and he's already,
 20 you know, there.
 21 Q. What about Fernando?
 22 A. Fernando, yes and no. There was times
 23 where he was there before, times when I didn't
 24 see him. I don't know if he was there earlier
 25 or he left. I don't know the specifics. I

[26] (Pages 98 to 101)

1	J. Guzman	1	J. Guzman
2	just know that sometimes we got to get there at	2	to do this, you know, Nafis, I need you to --
3	the same time, or he was there already, or he	3	it would be -- he would speak in general to the
4	came right after I came in, but I don't -- I	4	group. So that's why I can say that the duties
5	don't know if --	5	that I was performing was what he was assigning
6	There was a lot of times where I would	6	everyone because of the meetings that we had
7	go, and I, you know, didn't see a lot of	7	with Syed, the mandatory meetings.
8	people, you know. So I don't know if they had	8	Q. How do you know that your compensation
9	already come, left, or -- I don't know the	9	was typical of other drivers?
10	specifics.	10	A. I know -- I know -- I know that I had
11	Q. Were you scheduled to arrive at a	11	typical compensation than other drivers because
12	certain time?	12	Syed -- Syed told me like, you know -- when I
13	A. Scheduled in which way do you mean?	13	was working there, I ask him, you know, because
14	Like written on a piece of paper or by telling	14	I heard rumors that in the city certain people
15	me, someone telling me?	15	were getting paid \$4. So I asked Syed, you
16	Q. Were you expected to be at the facility	16	know, and he said no, we pay \$3 for New York
17	at a certain time?	17	City, and if it's Brooklyn, you know, the other
18	A. Yes. I was expected to be at the	18	places, it's \$4, and if it's something further
19	facility around 5:00.	19	than that, it's the stops plus the mileage, you
20	Q. Do you know if everyone was expected to	20	know, but that was just a question that I had
21	be there at 5:00 p.m.?	21	for him.
22	A. When -- when we had the meetings -- Syed	22	Q. Looking at paragraph 10, subparagraph C,
23	would have like meetings every couple of weeks.	23	it says, "All New York City area drivers had to
24	He would conduct the meetings the day that we	24	report to Defendant Hussain at the beginning
25	would receive our -- our checks and the -- the	25	and end of each shift that they worked".

1	J. Guzman	1	J. Guzman
2	reason why he would conduct it the day we	2	A. Uh-huh.
3	received the checks is if the meetings were	3	Q. "At the end of their shifts, all New
4	mandatory and if someone did not show up to the	4	York City area drivers had to report how many
5	meeting, he would not hand them over the check	5	meals they had delivered, how many miles they
6	that day. He would hold it for another day	6	had driven, and how many stops they had made.
7	even though he had it in his hand. I was like	7	They also has to return empty bags. New York
8	whatever. He -- the way that he operate -- but	8	City area drivers who did not comply with these
9	for me, being in those meetings, like I said, I	9	requirements were subject to discipline, up to
10	only listened. I did not open my mouth. And	10	including termination."
11	from listening to -- to -- to everything, he	11	Do you see that paragraph?
12	specifically states that, you know, make sure	12	A. Yes.
13	you're here by 5:00, make sure you're here by	13	Q. Do you know of any specific instances
14	5:00. So I can say that yes, you know,	14	where someone was disciplined for failing to
15	everybody was supposed to, more or less, be	15	report how many meals they had delivered?
16	there at least at that time from the meetings.	16	A. For not reporting -- I don't recall
17	Q. How do you know that your experiences	17	right now the specifics, but I did -- I did
18	were typical of how drivers were supervised and	18	see -- I did see and hear when I was in the
19	compensated?	19	office. I did see and hear what he would say
20	A. Because the meetings. The reason that I	20	to the guys that did not send it in.
21	can say that is because at the meetings, that's	21	One of the things that he would do
22	a time where I would listen to the rules. The	22	typically -- his nature was to hold the checks.
23	rules were not given -- you know, Syed would	23	You know, a lot of the guys dependent on
24	not -- we would not sit in a room, and Syed	24	receiving the check on time so that they could
25	would talk, and he would say Juan, I need you	25	cover their expenses and stuff, and he would

[27] (Pages 102 to 105)

1	J. Guzman	1	J. Guzman
2	typically do that. Like even though he had the	2	A. I know Fernando was.
3	checks, he would hold it for one or two days,	3	Q. How do you know that?
4	and that was like a way to say hey, you have to	4	A. Because I was in the room when he docked
5	get this done right. Or he would not pay you	5	Fernando, told him I'm not paying you for that.
6	for one stop. He'll say no, I'm not paying you	6	It was part of an argument they had, I'm not
7	for that one because you didn't document it on	7	paying you for that, I'm not paying you for
8	the manifest. You know, little things like	8	that delivery, you didn't put it on the right
9	that.	9	door, things of that nature.
10	Q. Do you remember any specific examples?	10	Q. Do you know anyone who was disciplined
11	A. Not right -- I can't -- not right now.	11	for not reporting how many meals they had
12	I don't have the name and the person, you know.	12	delivered?
13	What I'm telling you is what I saw when I was	13	A. No, I don't -- I don't recall. I don't
14	in the office with Syed, you know, when I was	14	recall.
15	getting my stuff, what he would tell people and	15	Q. Do you know anyone who was disciplined
16	do. I don't know if another plaintiff in the	16	for not reporting how many miles they had
17	case has anything, any information. I don't	17	driven?
18	have anything.	18	A. Yes.
19	Q. Do you know if anyone ever did not	19	Q. Who?
20	comply with those requirements mentioned in	20	A. Correa, I believe, was one of them one
21	paragraph 10C?	21	day. It was something with the mileage, you
22	A. If -- like I said, I know that there was	22	know, if you didn't get the mileage accurate,
23	certain people that had that. I just don't	23	I'm not paying you the mileage for here to
24	remember the names of them because some of them	24	here, things like that, you know.
25	are not even, you know -- not even the people	25	What I'm trying to tell you is

1	J. Guzman	1	J. Guzman
2	that -- like I know Fernando, and I know	2	everything that I've given you, it's what I saw
3	Correa, but the other guys, I don't talk -- I	3	and heard, but I didn't see a physical document
4	never talked to them like that, you know, so I	4	like a paper saying, you know, your pay because
5	don't have the information.	5	I don't see other peoples' paychecks.
6	Q. What are you referring to when you say	6	Q. I'm asking for your personal knowledge
7	"discipline" in that paragraph?	7	of certain statements that you have made in
8	A. Like docking you \$50 for a bag tie.	8	this after affidavit.
9	Q. You don't know of anyone that that	9	A statement that had been made was that
10	happened to?	10	drivers who did not comply with requirements,
11	A. He did that to --	11	mentioned in paragraph 10C, were subject to
12	MR. ANDREWS: Objection.	12	discipline up to and including termination.
13	A. He did that to Fernando, but I don't	13	I'm trying to understand the basis of that
14	know anybody -- I don't know the -- like the	14	statement.
15	names that I gave you there, I don't know the	15	A. Yeah. The basis is from the meetings.
16	other -- I don't know the names of the other	16	Q. It says that this happened.
17	guys, so I can't tell you the name.	17	Okay?
18	Q. You just said that that was for not	18	A. Uh-huh.
19	putting on a bag tie, right?	19	Q. I'm trying to understand who was subject
20	A. That was one incident that I saw, you	20	to discipline for not reporting how many miles
21	know, not putting on a bag tie, docking you for	21	they had driven.
22	misdelivery. You know, if you had two or three	22	A. Who was subject -- the person that did
23	misdelivery, they dock you for that.	23	not put the miles.
24	Q. Do you remember anyone who was	24	Q. Is there anyone in particular that you
25	disciplined for a misdelivery?	25	remember that happened to?

[28] (Pages 106 to 109)

1	J. Guzman	1	J. Guzman
2	A. No, I don't remember the name.	2	there, but there was New York City drivers that
3	MR. ANDREWS: Objection.	3	it didn't matter if they get there 11:00 at
4	The witness just testified and	4	night or 10:00 at night, and if they finish at
5	gave you a name.	5	7:00 in the morning, they would not get in
6	A. Yeah. I have a -- I don't know any --	6	trouble, and nothing would happen to them,
7	there was other people that I know the face,	7	anything like that, and one of them is Nafis,
8	but I don't remember the name because I haven't	8	and the other one is his uncle. They can come
9	been there in such a long time.	9	in at any time they want. And in the morning,
10	Q. Do you know anyone who was disciplined	10	if that Nafis was not able to finish on time,
11	for not reporting how many stops they had made?	11	Syed would call me and say to help him out and
12	A. Yes.	12	things like that.
13	Q. Who?	13	That's why I said this statement
14	A. Fernando. That's -- like I can give you	14	because, you know, generally, it was 5:00, but
15	Fernando because I, you know -- conversation	15	there's two or three people that they can --
16	with him. At the same time, I was in the	16	they just had like, you know, whatever you
17	office a lot of the times when Syed would say	17	wanted to do.
18	I'm not paying you for this, I'm not paying you	18	Q. Do you know if they were disciplined for
19	for that because you did this, you got to make	19	not showing up at 5:00?
20	sure and stuff like that.	20	A. No, they were not disciplined at all.
21	I never had that problem, you know, I	21	They were part of his circle.
22	was actually very happy. I never had that	22	Q. Do you know if any others besides those
23	problem. I didn't have misdeliveries and stuff	23	two showed up later than 5:00 p.m.?
24	like that often.	24	A. I -- no, I don't. That did not get
25	Q. We'll move on to the next paragraph,	25	disciplined? I don't recall.

1	J. Guzman	1	J. Guzman
2	which is 10D.	2	Q. Do you know anyone who was disciplined
3	It says, "All New York City area drivers	3	for not showing up to work at a specific time?
4	were expected to work at specific times. The	4	A. Yeah, Danny. Even Fernando one time was
5	schedules were created by Defendant Hussain.	5	disciplined for not showing up at time, and the
6	If they did not arrive to work at the assigned	6	consequences for that was, let's say, your
7	times, they were subject to discipline, such as	7	route, you have sixty stops that day. He would
8	reduction in wages often characterized as	8	just say okay, so I'm going to give ten of
9	"fines" and "penalties," up to and including	9	those stops to somebody else, so he would just
10	termination".	10	give it to somebody else.
11	Do you see that paragraph?	11	Q. That's what you're referring to as a
12	A. Yes.	12	discipline in that paragraph?
13	Q. What schedules are you referring to in	13	A. Yeah. They would take --
14	that paragraph?	14	MR. ANDREWS: Objection.
15	A. For example, this is a specific	15	A. For that specific situation, he would
16	situation that happened there, and it was -- in	16	just take your stops and distribute it to
17	the meetings, you know, he would speak	17	someone else, just, you know -- it was based on
18	generally to everyone and say, you know, you	18	emotions, attitude, you know. You know, he
19	have to be here 5:00 and this, this, and that.	19	just cut the route in half or whatever and give
20	If there was certain guys that they take food	20	it to someone else.
21	to Virginia, which is like a long trip, their	21	Q. When did that happen to Danny?
22	food was always done earlier, so they had like	22	A. I don't recall the exact date. It was
23	a different schedule.	23	during my time working there.
24	You know, the New York City area was	24	Q. How did you know that he was
25	like 5:00 was the time he wanted us to be	25	disciplined?

[29] (Pages 110 to 113)

1 J. Guzman
2 A. Because I was in the freezer when Syed
3 came and said all the curse words that he did
4 and handed his stops to other people.
5 And there was one specific time where a
6 lot of those stops was handed to me. He
7 actually gave it to me to do, about fifteen
8 stops of those.
9 Q. How late did Danny show up to work that
10 night?
11 A. I don't recall. It was probably like
12 two hours late, like 7:30.
13 Q. You were still at the facility?
14 A. Yes, I was there. That was at the time
15 where we had to pack a lot of food.
16 MR. ANDREWS: You're okay? Do
17 you need a break?
18 THE WITNESS: No, I'm good.
19 Q. Looking at paragraph 10F, it says, "All
20 New York City area drivers had to complete the
21 routes that they had been assigned and to
22 report back to Defendant Hussain. If they
23 failed to complete their assigned routes or if
24 they missed an assigned stop, they were subject
25 to discipline, up to and including

1 J. Guzman
2 termination".
3 Do you see that?
4 A. Yes.
5 Q. Do you know if anyone was disciplined
6 for not reporting to Defendant Hussain at the
7 end of their route?
8 A. Yes.
9 Q. Who?
10 A. It -- like I said, I don't know the name
11 because I'm very bad with names. I just
12 remember like faces. It was part -- people --
13 a lot -- some people are not even in the list
14 of names that I gave you. There were people
15 that were terminated.
16 Q. Who?
17 A. I don't know the name of the person
18 specifically.
19 Q. Moving on to paragraph K --
20 A. Okay.
21 Q. -- 10K, it says, "New York City area
22 drivers who attempted to change their
23 assignments without first obtaining Defendant
24 Hussain's approval were subject to discipline,
25 up to and including termination".

1 J. Guzman
2 Do you see that?
3 A. Yes.
4 Q. What does that mean?
5 A. What that means is when he gives -- when
6 you have your assignment, your route, and,
7 let's say, for example, you wanted to like --
8 let's say, tonight you wanted to -- I wanted to
9 -- I have a lot of stops, let me see if I can
10 give ten stops to somebody else. He -- he --
11 he -- you cannot do that. Like, you know, you
12 have to speak to him and let him know, and he
13 will assign who would cover that, or he'll tell
14 you no, you got to do them or whatever.
15 The other -- I had a specific situation
16 actually with this, which was the time of the
17 -- remember I told you that he cursed at me and
18 my mother and stuff?
19 Q. Yes.
20 A. It's a specific situation what happened
21 with Kenneth Chow and Nafis, and Nafis, which
22 is Syed's friend -- and what happened was that
23 Nafis, for some reason, he wanted to do one
24 hundred stops every day, and his route would
25 have about ninety stops, ninety-two stops. So

1 J. Guzman
2 he -- he would go into the office, and he would
3 change like, you know -- like take stops that
4 were in, let's say, my route and put it in his
5 route to do one hundred, to get to one hundred
6 stops every day.
7 And then one day, he missed -- he used
8 to miss some deliveries, so one day, Syed got
9 upset, I believe, and Syed told him from now on
10 -- Syed pulled me into the office. He said why
11 didn't you let him take the stop. I say, you
12 know, I'm not a manager. I don't -- I don't --
13 I just do what you tell me to do. So he told
14 me that day from now on, you know, you take
15 your stops and to Nafis' stops.
16 So for about a week or two, everything
17 was going well, and Nafis came again and did
18 the same thing, and I didn't say anything that
19 time because I just like to be quiet, and that
20 was when that one bag was left behind because
21 Nafis -- it wasn't in my manifest, and Nafis
22 had hidden the bag so he can do that delivery,
23 and so that's when he called me in the middle
24 of the night and cursed at me. I had to go
25 back to the facility when I was done, pick that

[30] (Pages 114 to 117)

1 J. Guzman
 2 one back up, go back to the city and deliver --
 3 deliver the bag, and so that's one -- like
 4 that's -- that's -- that's one situation where
 5 that happened.
 6 Q. Did you ever try to change your route?
 7 A. No. No, I didn't. I never request
 8 anything. I just go in to work and just do the
 9 work that I was asked to perform.
 10 Q. Did you ever try to arrange with another
 11 driver to change your assignment?
 12 A. No.
 13 Q. Do you know anyone specifically that
 14 ever tried to arrange with another driver to
 15 change his or her assignment?
 16 A. No. The only instance I know was at
 17 that part when Nafis was taking, you know,
 18 whatever he was missing to get to like almost
 19 one hundred stops. I don't -- I don't know
 20 anything other than that.
 21 MR. ANDREWS: Yale, depending on
 22 how much more you have, I think we need
 23 to take a lunch break.
 24 MR. POLLACK: Yes, we will need
 25 to take a break.

1 J. Guzman
 2 MR. ANDREWS: For about maybe
 3 forty-five minutes?
 4 MR. POLLACK: Yes, let's do that
 5 now.
 6 (Whereupon, a luncheon recess
 7 was taken from 12:45 to 1:37.)
 8 MR. POLLACK: What was last
 9 question?
 10 (Whereupon, the record was read
 11 by the reporter.)
 12 Q. Looking at, still, Defendant's 66,
 13 looking at paragraph 11, it says, "In addition
 14 to myself, I am aware and have personal
 15 knowledge that the defendants employed many
 16 other similarly situated drivers and/or food
 17 delivery employees and routinely failed to pay
 18 them overtime compensation of one and one-half
 19 times their regular rates for those hours that
 20 they worked in excess of forty per week".
 21 Do you see that paragraph?
 22 A. Yes, paragraph 11.
 23 Q. Other than yourself, who were the
 24 similarly situated drivers you're referring to
 25 in that paragraph?

1 J. Guzman
 2 A. Referring to Juan Correa, Fernando
 3 Hernandez, Nafis, Syed's Uncle. The other
 4 names -- I don't recall the names exactly, but
 5 there's a list of people.
 6 Q. Did you discuss their rates of pay with
 7 them?
 8 A. I -- I had a conversation with -- with
 9 Juan Correa that I recall. I also had a
 10 conversation with Alex. I don't know his last
 11 name.
 12 Q. What do you remember discussing with
 13 Mr. Correa?
 14 A. I -- I just asked how do you get paid
 15 basically just to figure out if I -- we had the
 16 same way of pay. And I asked Alex the same
 17 thing.
 18 Q. When did those conversations take place?
 19 A. When I was employed by --
 20 Q. Was it before May of 2012?
 21 A. I don't recall the date, but it wasn't
 22 at the end of my employment there. It was like
 23 towards the beginning of my employment there.
 24 Q. What did Mr. Correa tell you?
 25 A. No. He just said that he gets paid by

1 J. Guzman
 2 the stops and the mileage.
 3 Q. What did Alex tell you?
 4 A. Alex told me it was \$4 a stop because he
 5 was in Brooklyn and Queens.
 6 I also spoke to Fernando, and he told me
 7 it was \$3 a stop for the city that he get paid,
 8 and I also spoke to Nafis that used to do the
 9 city as us. He get paid \$4 in the city.
 10 Q. Do you know what Correa's route was?
 11 A. His route was in Jersey. I don't know
 12 the specifics of his route. I know it was
 13 something in Jersey.
 14 Q. Looking at paragraph 12 of Defendant's
 15 66, it refers to an Exhibit A, and in that
 16 paragraph, you say, "I recognize the majority
 17 of persons listed".
 18 I'm going to ask for you to look at
 19 Exhibit A and tell me which of the people you
 20 recognize on that exhibit.
 21 A. Okay. That's easier.
 22 Julian Alvarez I recognize. I recognize
 23 Kenneth Chow, Syed.
 24 MR. ANDREWS: Can you read the
 25 last name?

[31] (Pages 118 to 121)

1	J. Guzman	1	J. Guzman
2	A. Chowdhury. Juan Correa, Owen Dacres,	2	the same thing that I would do, to put the ice
3	Ezequiel, Ortiz, David Figeroux, Errol. I	3	packs and stuff.
4	remember Errol.	4	Q. They were there before you?
5	MR. ANDREWS: Say the last name.	5	MR. ANDREWS: Objection.
6	A. Errol Graham. Rohan Heaven, Fernando	6	A. Some would be there before, some would
7	Hernandez.	7	be there after, some would get there -- I would
8	MR. ANDREWS: Yourself?	8	get there -- like, for example, Rohan would get
9	A. Myself. I recognize myself,	9	there sometimes like when I'm -- when I get
10	Juany Guzman. Syed Hussain, Eugen Kimble,	10	there, he was already putting the ice on the
11	Michael Lattimore, Evaristo Martina, Nazrul,	11	rackets.
12	Islam, Edwin Perez, Diana Salazar, Nafis	12	Q. Were any others there before you
13	Shamsuzzoha, Drew Traverzo, Bryant White, David	13	arrived?
14	Williams, Alexander Zapata.	14	MR. ANDREWS: Objection, asked
15	And there were other people that I don't	15	and answered.
16	know their name by, you know, their real name.	16	A. I don't recall the exact name, but
17	They have like an alias, but I don't know which	17	sometimes there were someone who was already
18	one on this list.	18	there unpacking. Sometimes there was someone
19	Q. In your affidavit, paragraph 12, the	19	who would be there after. You know, I'm
20	exhibit you were referring to was the Exhibit A	20	already finishing, they're just start getting
21	that you just read off of, correct?	21	to the facility.
22	A. Uh-huh.	22	Q. Was Fernando there before you?
23	MR. ANDREWS: Say yes.	23	MR. ANDREWS: Objection.
24	A. Yes.	24	A. Not that I recall. I don't know.
25	Q. That didn't have aliases on the list	25	Q. Did you ever see him there before you?

1	J. Guzman	1	J. Guzman
2	that you reviewed that you said you recognized	2	A. Yes. Yes.
3	the majority of, correct?	3	Q. Did you ever see him arrive after you?
4	MR. ANDREWS: Objection.	4	A. Yes.
5	A. Yes.	5	Q. What was the latest you would be done
6	Q. Moving on in that paragraph, it says,	6	returning the bags, completing the paperwork,
7	"The individuals whose names I recognize had	7	and then --
8	the same duties, task and responsibilities that	8	A. The latest that I ever was there?
9	I had".	9	Q. Yes.
10	Do you see that?	10	A. There was one time that --
11	A. Yes.	11	MR. ANDREWS: Objection.
12	Q. How do you know that?	12	A. -- I was there like 8:00 in the morning.
13	A. From just seeing them doing the work.	13	Q. What about typically?
14	You know, we did the same work. We would go	14	MR. ANDREWS: Objection.
15	in, pack together, pick up bags, and then drive	15	A. Typically, it would be around 6:00 in
16	off to our routes and return the bags. So it's	16	the morning.
17	basically the same duties we conducted from	17	Q. Is when you would drive home?
18	what I can visualize and some that I heard	18	A. Yeah, and then I start driving home
19	talking.	19	around 6:00 typically.
20	Q. When you returned to the facility at the	20	Q. Did you ever change the order of the
21	end of performing your deliveries, were any	21	deliveries that was on your manifest?
22	other drivers present?	22	A. Change the order? Not really. I'm
23	A. A lot of time, yes. Most of the time,	23	going to actually explain it. It's a lot
24	yes. We returned, and there would be like	24	easier if I explain it, how it worked.
25	three or four drivers that had returned to do	25	Q. Okay. Go ahead.

[32] (Pages 122 to 125)

1 J. Guzman
2 A. Yeah. So the system -- it's very
3 important to understand how the computer prints
4 out the list of names of -- you know, for the
5 deliveries. The computer would do it based on
6 alphabetical order or by the mileage, not
7 meaning that that's the best way to do the
8 route because, you know, if someone is -- if
9 someone lives, let's say, here and somebody
10 else lives like going up more and then --
11 Q. For purposes of clarify, "here" meaning
12 --
13 A. In this area.
14 Q. -- 100 Williams Street or this area?
15 A. Yeah, 100 Williams Street, and someone
16 lives on 23rd Street, for example, and then
17 somebody else lives on 22nd Street, the system,
18 since it prints it out sometimes in
19 alphabetical order or in -- by numbers, by ID
20 numbers and stuff, it would have to be
21 rearranged.
22 When I started working at Fresh Diet,
23 the way that Syed taught me to do it was okay,
24 come in and sit with me, and I will rearrange
25 the -- the -- the -- instead of -- I'll print

1 J. Guzman
2 out the manifest, which is the one that the
3 computer prints out, and then I'll go into the
4 computer, and I'll do -- I'll change the order
5 so I can guide you through the route. That was
6 in the beginning, but once he taught me and I
7 got the hang of it and I did the delivery for a
8 few weeks, I was able to sit down, and with a
9 pen, next to him and figure out the best way to
10 do the route because if you do it the way
11 that --
12 No one would do it the way that the
13 system told you because if you do it, it would
14 take two days to do the route because it's
15 going to tell you go to 23rd Street and then
16 the next stop is around William Street and then
17 go back to -- you know what I'm saying? So I
18 was taught by Syed how to guide the route so it
19 would be more efficient, so that's how it
20 worked.
21 Q. Did you ultimately decide how the route
22 was going to be driven by you?
23 MR. ANDREWS: Objection.
24 A. No, not ultimately, because at the
25 beginning, I had to learn from -- Syed would do

1 J. Guzman
2 it himself with his hands, and then after that,
3 I would sit down next to him and take a pen and
4 figure out.
5 I would even ask questions because he
6 knows Manhattan like no one. He had a lot of
7 experience, so I would do like that. I
8 can't -- I couldn't just come up with okay, let
9 me -- let me do this, this, and that. It would
10 be the way that he taught me, you know, start
11 from the top, work your way down.
12 Q. Your deliveries, were they generally the
13 same on every day of the week?
14 MR. ANDREWS: Objection, asked
15 and answered.
16 MR. POLLACK: I'll clarify.
17 Q. Were the Monday deliveries generally the
18 same every Monday?
19 A. Not necessarily. It was -- you will do
20 the same route, you know, but sometimes, let's
21 say -- what's your name again?
22 Q. Yale Pollack.
23 MR. ANDREWS: Mr. Pollack.
24 A. Let's say Mr. Pollack was a client on
25 Monday but Mr. Pollack had to go on vacation or

1 J. Guzman
2 he just doesn't want to get it because he's
3 going to stay at home or whatever the situation
4 and you were to call in and cancel the
5 delivery, or yeah, I'm going to do it one
6 Monday but then that one doesn't get done, you
7 know, or somebody else comes in to -- a new
8 order. So it varies. It was consistently --
9 yeah, you have the same route, but it was
10 always, you know, that one new client or that
11 one client that is not a client anymore for
12 Fresh Diet.
13 Q. Aside from a cancelled client or a new
14 client for the particular day of the week, the
15 route was generally the same on --
16 A. Every day.
17 Q. The Monday would be the same as the
18 following Monday, but for --
19 A. Yeah.
20 Q. -- the new client or the cancelled
21 client?
22 A. Yes.
23 Q. The same for Tuesday, Wednesday,
24 Thursday, Friday, Sunday?
25 A. Yes, and the client -- let's say, most

[33] (Pages 126 to 129)

1 J. Guzman
2 of the client that were there for Monday would
3 be the same one for Tuesday, would be the same
4 one for Wednesday. The client would order the
5 food every single -- they would be on the
6 program for every single day.
7 Q. There were some that had daily
8 deliveries?
9 A. Yes, most of them.
10 Q. Did you use your own car to perform the
11 deliveries?
12 A. Yes.
13 Q. What car was that?
14 A. When I started, it was a -- a 1990 -- I
15 believe it was 1999 BMW 528, and towards the
16 end of my time there, it was a 2002 Audi A4.
17 Q. Were these cars owned by you?
18 A. Yes.
19 Q. Why did you switch cars?
20 A. The -- the BMW was not holding up for
21 the route. It needed a lot of repairs and
22 stuff like that, so I ended up just getting
23 another car.
24 Q. Did you have insurance for the cars?
25 A. At that time, I had insurance for the

1 J. Guzman
2 BMW. Actually, right now, I have insurance for
3 the Audi.
4 Q. Did you pay for the insurance?
5 A. Yes.
6 Q. Do you know who the insurance was
7 through?
8 A. I -- it was -- now, it's -- I have IFA.
9 At that time, it was -- I believe it was
10 Prudential.
11 Q. What do you have now?
12 A. I have IFA. It's a company from New
13 Jersey.
14 MR. ANDREWS: IA?
15 THE WITNESS: IFA.
16 MR. ANDREWS: IFA?
17 THE WITNESS: Uh-huh.
18 Q. That's for the 2002 Audi A4?
19 A. Yes.
20 Q. Do you know what insurance, if any, you
21 had for the BMW?
22 A. It -- it was -- actually, to answer
23 that, I submitted in a copy of that just so
24 that I don't say something that I'm not, you
25 know, correct. There's actually a document

1 J. Guzman
2 that I submitted with -- I submitted the
3 registration and the insurance card.
4 MR. POLLACK: I'm going to make
5 a request.
6 A. Yes.
7 Q. What'd you say you submitted?
8 A. I believe it was -- I know the insurance
9 card is there, and I believe there was a
10 registration for the vehicle that I submitted
11 to my attorney, I believe it was.
12 Q. Did you pay for any repairs to the car
13 on your own?
14 A. Yes.
15 Q. Did you ever seek reimbursement for
16 those repairs?
17 A. No.
18 Q. Did you pay for the car's maintenance?
19 A. Yes.
20 Q. Did you ever seek reimbursement for the
21 maintenance?
22 A. No.
23 Q. Did you ever take any breaks during the
24 time you performed deliveries?
25 MR. ANDREWS: Objection.

1 J. Guzman
2 A. No.
3 Q. You never stopped to eat?
4 A. Well, I did not stop to eat. If I had
5 to eat something, I would take it before I
6 start my -- my shift, and I would just eat on
7 the way where I was driving.
8 Q. You never stopped for any reason during
9 the deliveries?
10 A. No, unless I had like a tire that
11 puncture and stuff like that.
12 The time did not allow you to actually
13 sit down and have food because, you know, you
14 have to try to finish as soon as possible
15 because since you on the road, you don't know
16 what -- you know, the night might be going
17 perfect, and you might have ten deliveries and
18 at 4:00 in the morning you know you can get
19 them done in, you know, the matter of an hour
20 and a half or an hour, and then you get a
21 punctured tire. So, you know, you don't want
22 that to happen.
23 Q. Would you ever call Syed during the time
24 you were performing deliveries?
25 A. Yes, I would call Syed multiple times

[34] (Pages 130 to 133)

1 J. Guzman
2 while performing deliveries.
3 Q. For what reason would you call Syed?
4 A. I would call when I could not find an
5 address. I would call when the client was not
6 answering. I would call if the key was not in
7 the -- in the ring where all the keys were for
8 the delivery. I would call if I had any issues
9 with my vehicle. Let me see what else I can
10 remember. If, for any reason, I was running
11 late on the deliveries, you know, because of
12 traffic or anything, I had to call Syed with
13 times so that he can arrange to help get the
14 deliveries done on time, like someone would
15 come help.
16 Q. Did that ever happen?
17 A. To me, it happened one time, just one
18 time.
19 Q. Were you ever unavailable between
20 January and May of 2012 to make deliveries?
21 A. No, I was not -- I was never
22 unavailable. The only thing that I did was
23 there was a time where I took a trip to Costa
24 Rica for -- I believe it was four days. I
25 would have to look into my passport to get the

1 J. Guzman
2 exact dates. It's still there. With prior --
3 you know, with approval from Syed. I actually
4 spoke to him about a month and a half before I
5 was going to plan to do that trip, and I had an
6 approval, a verbal approval, from him. He said
7 yes, okay, I'll get you someone to cover for
8 that area.
9 Q. You went on that trip?
10 A. Yes, I went on that trip. I have my
11 passport. I can provide those dates.
12 Q. I'm going to leave a blank in the
13 transcript, and when you have a chance to
14 review it, if you can, just insert that
15 information.
16 A. Okay.
17 (INSERT)
18 MR. ANDREWS: The dates of his
19 trip to Costa Rica?
20 THE WITNESS: Yeah. I'll send
21 it in.
22 Q. Other than not being available for the
23 Costa Rica trip, did you ever call and say you
24 could not come in to perform deliveries?
25 A. Yes. There was one other time where I

1 J. Guzman
2 did a route. It was still cold at that time,
3 and it was raining, and for some reason, I
4 caught a horrible cold, and I called in. It
5 was -- I believe it was one or two days. It
6 was no more than one or two days that I just
7 couldn't get up from bed, and I called Syed,
8 and Syed told me to just rest for that one or
9 two days and, you know, come back once I feel
10 okay, and that was it. I don't -- I don't have
11 any other -- I don't recall any other time I
12 took any time off.
13 Q. Did your routes change after you took
14 those one to two days out for being sick?
15 A. No.
16 Q. Did you ever submit any type of expense
17 report to Syed for any expenses you incurred
18 for making deliveries?
19 A. No.
20 Q. How often were you paid?
21 A. Weekly.
22 Q. Did you have any other source of income
23 besides the payment you received from
24 Late Night between January 2012 and June 2012?
25 MR. ANDREWS: Objection.

1 J. Guzman
2 A. No.
3 Q. What did you do during the days that you
4 performed deliveries?
5 A. Rephrase that.
6 Q. What did you do during the daytime?
7 A. During the daytime, I would sleep, rest
8 a lot. I would rest a lot, and then once I
9 wake up, just take a shower, get something to
10 eat, and just go straight to work.
11 Q. How did the relationship with The Fresh
12 Diet end?
13 MR. ANDREWS: Objection, asked
14 and answered.
15 A. What was it?
16 Q. How did the relationship with The Fresh
17 Diet end?
18 MR. ANDREWS: How did your
19 relationship --
20 A. My relationship? Can you elaborate more
21 on that?
22 Q. You stopped in June 2012, correct?
23 A. Yeah. In June, I had no more work.
24 Q. It said that, I believe, the last day
25 you performed any work was June 26 --

[35] (Pages 134 to 137)

1 J. Guzman
2 A. June 26, I believe.
3 Q. -- 2012, correct?
4 A. Yes, I believe so. Yes.
5 Q. Do you know if you were ever terminated?
6 MR. ANDREWS: Objection.
7 A. No, I don't know. I don't know
8 anything. It just ended the way that I told
9 you, just by -- just neglect, being neglected,
10 neglected, neglected.
11 Q. Did you ever receive any type of
12 benefits from The Fresh Diet?
13 MR. ANDREWS: Objection.
14 A. No.
15 Q. That was a no?
16 A. No.
17 Q. I believe you testified earlier that
18 taxes were not taken out of your pay, correct?
19 A. No.
20 Q. No, they were not?
21 A. No, they were not taken out.
22 (Whereupon, 2012 1099 form was
23 marked as Defendant's Exhibit 68, for
24 identification, as of this date.)
25 Q. I'm now going to show you what's been

1 J. Guzman
2 marked for identification as Defendant's
3 Exhibit 68, and I'm going to ask if you've ever
4 seen that document before today (handing).
5 A. Yes.
6 Q. Do you understand what that document is?
7 A. It's concerning my taxes.
8 Q. Does your name appear on the document?
9 A. Yes.
10 Q. Does that accurately reflect any
11 compensation you received?
12 A. Yes.
13 Q. What number reflects that?
14 A. \$15,082.
15 Q. That's what you received in 2012?
16 A. Yes.
17 MR. ANDREWS: Objection.
18 Q. Did you file a tax return in 2012?
19 A. Yes. I filed these taxes (indicating).
20 Yes.
21 Q. When you say you filed "these taxes,"
22 what do you mean?
23 A. I took the -- whatever I got in the mail
24 from Fresh Diet -- I think it was February or
25 January -- and I went to file at a -- at an

1 J. Guzman
2 accountant.
3 Q. Was it with an accountant or a firm?
4 A. It was a -- I did it in -- in
5 Pennsylvania with someone who does taxes at an
6 office.
7 Q. Do you know if you filed a Federal tax
8 return?
9 A. I don't know anything about taxes. I
10 just hand them over, and they did everything,
11 like brought the documents over. They did
12 everything.
13 MR. POLLACK: I'm going to make
14 a request for the production of the tax
15 return from 2012 --
16 A. Okay.
17 MR. POLLACK: -- State and
18 Federal.
19 Q. 2012 was the only calendar year that you
20 performed any delivery work for The Fresh Diet,
21 correct?
22 A. Yes.
23 MR. ANDREWS: Just to clarify,
24 Yale, you were asking about his tax
25 returns for the year 2012, not tax

1 J. Guzman
2 returns that would have been filed in
3 2012 but tax returns for 2012?
4 MR. POLLACK: Tax returns for
5 2012 reflecting the compensation
6 indicated on the 1099 marked as
7 Defendant's 68.
8 MR. ANDREWS: I just wanted to
9 clarify because I think the record was
10 unclear. That's fine.
11 Q. Did you just file one tax return for
12 2012?
13 MR. ANDREWS: Objection.
14 A. I don't know.
15 Q. Did you file quarterly?
16 A. No, just one time. I just went -- when
17 I got -- I guess -- I only received one form in
18 the mail from Fresh Diet, and when I had it,
19 then I went to and took it in.
20 Q. Do you remember when that was?
21 A. 2013. I believe it was in the first two
22 months, whenever that was.
23 Q. Do you know if your accountant deducted
24 any expenses on your tax return?
25 MR. ANDREWS: Objection.

[36] (Pages 138 to 141)

1 J. Guzman
2 A. No, I don't know.
3 Q. Do you know the name Judah Schloss?
4 A. No.
5 Q. Do you know the name Zaimi Duchman?
6 A. No.
7 Q. You previously testified that you no
8 longer have the cell phone that you
9 communicated with Syed with.
10 A. Yeah, I don't have either or.
11 (Whereupon, Text messages Were
12 marked as Defendant's Exhibit 69, for
13 identification, as of this date.)
14 Q. Now I'm going to show you a document
15 that's been marked as Defendant's Exhibit 69,
16 Bate stamp number FD000080 through 000092
17 (handing).
18 I'm going to ask if you recognize what
19 is in these documents.
20 A. Yes, I've seen these before.
21 Q. When have you seen those before?
22 A. I believe it was on Syed's affidavit.
23 I'm not sure. I believe it was.
24 Q. Do you know what these are?
25 A. Text messages.

1 J. Guzman
2 Q. Do you know who they're between?
3 A. Me and -- Juany and me, which, I
4 believe, is Syed.
5 Q. Was your telephone number, in January
6 2012, 646-393-6534?
7 A. Yes.
8 Q. Did you have that same phone number
9 until June 2012?
10 A. Yes.
11 Q. Looking at the entry on FD000080, do you
12 see the text next to Juany where it says, "Okay
13 how many stops because I will be in a lil late
14 because I have to wait for my wife to get home
15 like at 8"?
16 A. Yes.
17 Q. Do you see that that was sent on
18 May 23rd?
19 A. Yes.
20 Q. Was this the first time you had ever
21 said that you were going to be late?
22 MR. ANDREWS: Objection.
23 A. I don't recall. I don't believe so it
24 was the only time, but I don't recall.
25 Q. Do you know what text this was in

1 J. Guzman
2 response to?
3 A. No, because it's not here. Whatever
4 conversation was before then is not here.
5 Q. Do you see above where it says "Me:
6 Brooklyn qns"?
7 A. That's Syed. Syed said "Brooklyn qns,"
8 which means the route in Brooklyn/Queens, but
9 there's nothing on top of that. I'm pretty
10 sure I can recall there was more text on top of
11 that.
12 Q. Was this part of your regular route at
13 that time, "Brooklyn and qns"?
14 MR. ANDREWS: Objection.
15 A. No.
16 Q. You said, "Okay how many stops,"
17 correct?
18 A. Where is that? Which one is that on?
19 Q. The first text.
20 A. Okay. I see it. Yes.
21 Q. Why were you asking how many stops that
22 was?
23 A. Because that wasn't my regular route,
24 and that was Alex, a gentleman named Alex, his
25 route. I remember his wife was -- his wife was

1 J. Guzman
2 having some problem. I don't know if she was
3 pregnant or something. Something was going on,
4 and since I had a good relationship with Syed,
5 Syed asked me if I can, you know, cover that
6 route when Alex couldn't get it done. So I
7 never said no. I just say yes.
8 And the reason why I wrote "how many
9 stops" is because that route is very difficult
10 to conduct, that route.
11 Q. How do you know that?
12 A. Because I did it a couple times, and it
13 was very difficult to do that route for the
14 simple fact that, you know, New York City
15 streets are like, you know, numbers, and down
16 here -- in this area, Downtown, you have
17 certain streets with names, but in this route,
18 you might have a stop in one part of Brooklyn,
19 then you have to drive all the way to Queens,
20 and over there is all just names, names, names.
21 So it was a lot -- it was a lot more, you know,
22 difficult to learn that route.
23 Q. I thought you had testified earlier that
24 before early June 2012 you had only done
25 Manhattan.

[37] (Pages 142 to 145)

1 J. Guzman
 2 Is that an incorrect statement?
 3 MR. ANDREWS: Objection.
 4 A. Probably, because the thing with dates,
 5 when you have almost two years that you haven't
 6 seen something, it's very hard for your mind to
 7 just say a specific date, you know. I could
 8 say more or less, but being specific is kind of
 9 tough when it's been like, you know, two years.
 10 The other thing, actually, I can
 11 remember from this text from reading it now,
 12 one of the reason why I say that is because,
 13 like I was telling you earlier, I always like
 14 to finish on time just to make sure that, you
 15 know, the client got their food on time and
 16 everybody's happy, and the reason why I asked
 17 that because the situation at that moment where
 18 my wife was not home, or my girlfriend was not
 19 home, I wanted to make sure that I didn't have
 20 exaggerated amount of stops that I cannot
 21 finish on time because, you know, with Fresh
 22 Diet, the most important thing is that the
 23 client gets their meal before they wake -- you
 24 know, they wake up in the morning.
 25 Q. Is it your testimony that it's tougher

1 J. Guzman
 2 to remember dates today than it was a year ago
 3 or in June 2012 regarding the incidents that
 4 you're claiming in this action?
 5 MR. ANDREWS: Objection.
 6 A. It's a lot -- a lot harder as time
 7 passes, which is -- that's common.
 8 Q. Is it fair to say that the July 2012
 9 affidavit marked as Defendant's 64 would have a
 10 more accurate description of dates --
 11 MR. ANDREWS: Objection.
 12 Q. -- since it was closer in time to the
 13 time you worked for The Fresh Diet?
 14 MR. ANDREWS: Objection.
 15 A. That would depend.
 16 Q. It says, again, looking at text messages
 17 on FD000080, that you have to wait for your
 18 wife to get home "like at 8:00".
 19 Do you see that?
 20 A. Yes.
 21 Q. Who is your wife?
 22 A. I don't have a wife. I just say like
 23 that. I'm not married, you know. Just like
 24 when you are together with someone, you refer
 25 to them as your wife, but I don't have any

1 J. Guzman
 2 legal document that I am married with Andrea.
 3 Q. Andrea was the person --
 4 A. Yes.
 5 Q. -- you were referring to?
 6 A. Yes.
 7 MR. POLLACK: Let's take a quick
 8 break.
 9 (Whereupon, a recess was taken
 10 at this time.)
 11 Q. Just continuing --
 12 A. Sure.
 13 Q. -- with Defendant's 69.
 14 That text is from you, correct?
 15 A. The first one, the one that says,
 16 "Juany," yes.
 17 Q. The one next to Juany saying, "Okay how
 18 many stops," correct?
 19 A. Yes.
 20 Q. Does this indicate that you would not be
 21 able to show up to the facility because your
 22 wife was not home?
 23 MR. ANDREWS: Objection.
 24 A. No. I did show up to the facility that
 25 day.

1 J. Guzman
 2 Q. Did you have to wait for your wife to
 3 come home before you left that day?
 4 A. Yes, because of my son. I didn't have
 5 someone to take care for him that day.
 6 Q. Did anyone else besides you and -- I'll
 7 refer to her as Andrea --
 8 A. Yeah, Andrea.
 9 Q. -- look after your son on the days you
 10 performed deliveries for The Fresh Diet?
 11 A. Yes, Andrea's mother.
 12 Q. How frequently would she look after your
 13 son?
 14 A. Almost all the time, almost.
 15 Q. What does Andrea do for work?
 16 A. She's a teller at Wells Fargo, but
 17 that's now. At that time, she worked at JFK
 18 Airport.
 19 Q. Did she work at JFK Airport from
 20 January 2012 until June 2012?
 21 A. Yes.
 22 Q. Were her hours consistent?
 23 MR. ANDREWS: Objection.
 24 A. I believe so. I don't recall perfectly,
 25 but I believe so.

[38] (Pages 146 to 149)

1 J. Guzman
2 Q. What were her hours?
3 A. Like morning time to -- to the
4 afternoon.
5 Q. What time would she leave for work?
6 A. I believe she had to be in at work
7 before 9:00, I believe, 9:00 in the morning,
8 and then she would come out -- I don't know the
9 exact time she would come out, but then she
10 would have to take the bus and the train to get
11 home.
12 Q. Were you home when she left for work?
13 A. Was I home when she left for work? Yes,
14 I was.
15 Q. You were done completing deliveries --
16 A. Yes.
17 Q. -- before she left --
18 A. Yes.
19 Q. -- for her job?
20 A. Yes.
21 MR. ANDREWS: Objection.
22 A. Yes.
23 Q. Do you know what time she left?
24 A. Yes.
25 Q. What time?

1 J. Guzman
2 A. What I would do is when I finish
3 everything, I would drive home, and I -- she'll
4 be ready with my son, and what I'll do is I'll
5 drive from -- from the house -- her mother --
6 her mother lives on the way to the airport. We
7 would drop off Adrian, and then I would drop
8 her off at the airport, and I would go home to
9 sleep, and then she would come on the train
10 back, would pick up my son and come back on the
11 train most of the time.
12 MR. ANDREWS: We're going to
13 object to the use of your son's name in
14 any subsequent activities in this case.
15 THE WITNESS: Okay.
16 Q. What time would she typically get home?
17 A. She -- I really don't know the exact
18 time because I was not home when she gets home
19 most of the time.
20 In this instance, I was home for the
21 fact that her mother could not take care of my
22 son that day, so I had to take her to work and
23 stay with my son.
24 Q. Other than on May 23rd, do you remember
25 any other instances where that happened?

1 J. Guzman
2 A. I don't recall right now.
3 Q. Do you know if it happened on any other
4 instances besides May 23rd?
5 A. I don't recall right now.
6 Q. Do you know what time you sent this text
7 message?
8 A. I'm pretty sure it was early, you know,
9 because I usually -- I usually tell people
10 ahead of time so that we could plan things, but
11 I cannot see it here in this document, in this
12 exhibit.
13 Q. Do you know --
14 A. Oh, it's -- no. No. That's not it. I
15 thought this was the time, but that's not
16 (indicating). That's the time that they took
17 the picture of this. No, I can't tell, from
18 the document, the time.
19 Q. Do you see the next message from "Me"
20 says, "47"?
21 A. Yes.
22 Q. Do you know what that means?
23 A. It was relating to the question that I
24 asked, how many stops on that route. He says
25 "47" stops.

1 J. Guzman
2 Q. Forty-seven stops?
3 A. Uh-huh.
4 Q. Is that next entry next to Juany your
5 response to the "47"?
6 A. Yes. Should I read it or --
7 Q. I'll read it.
8 It says, "Boss I don't think ill finish
9 by 5 am because last time I inished at 5 and I
10 started at 8 I will be getting to the warehouse
11 around 930 boss".
12 Do you see that?
13 A. Yes.
14 Q. Is that text from you?
15 A. Yes.
16 Q. That's to Syed?
17 A. Yeah, Syed.
18 Q. For May 23rd, do you know what time you
19 showed up to the warehouse?
20 A. I don't recall. If -- if -- if my wife
21 was going to be home at 8:00 and I left at
22 8:00, I would say it would be like 30-minute
23 drive. I think it's like a 30-minute drive if
24 there's no traffic or so.
25 Q. Do you know why you said you weren't

[39] (Pages 150 to 153)

1 J. Guzman
 2 going to be at the warehouse until 9:30 that
 3 night?
 4 A. Probably because, you know -- for
 5 example, the way that I am is if -- I like to
 6 be, you know -- I don't like to say I'm going
 7 to be at a place at a time and be there late.
 8 I rather be there before I get there.
 9 So if my wife is coming on the train and
 10 she's going to get there at 8:00 that she tells
 11 me, you know, I know it takes me about thirty
 12 minutes, but, you know, you never know what can
 13 happen. So I rather give, you know, more ample
 14 time so that -- you know, probably I was there
 15 before 9:30, but I like to give myself ample
 16 time. I don't like to be late.
 17 Q. In that text, it's referring to some
 18 other time where it says, "last time I inished
 19 at 5 and I started at 8".
 20 Do you see that?
 21 A. Yes, what this --
 22 MR. ANDREWS: What page are we
 23 on?
 24 THE WITNESS: The first page,
 25 the first page.

1 J. Guzman
 2 A. I'm going to explain the whole text.
 3 Q. Well, I just have a question.
 4 Was there a last time that you remember
 5 that you were referring to?
 6 A. I believe the -- prior to this date,
 7 which, as I said, it's missing text here, I
 8 covered for -- probably covered for Alex, and
 9 that time, my first delivery at the first door
 10 was at 8:00, and I did not finish the entire
 11 route until 5:00 a.m., which is, you know, that
 12 cut-off time where all the clients should have
 13 their meal. So I'm letting Syed know that, due
 14 to the situation, I don't think that
 15 forty-seven stops I was able to finish at
 16 5:00 a.m., you know. So I was trying to figure
 17 out how we can work that out so that the
 18 clients can get their food on time, the last
 19 clients.
 20 Q. Based on that last one that you did,
 21 that last route for the similar stops,
 22 situation, you thought that you were going to
 23 finish your deliveries on May 23rd later than
 24 5:00 a.m.?
 25 A. Yes.

1 J. Guzman
 2 Q. Were you disciplined for showing up late
 3 to work that night?
 4 MR. ANDREWS: Objection.
 5 A. No, I was not disciplined because I
 6 always let Syed know of the situation ahead of
 7 time. You know, I let him know ahead of time
 8 so we could figure out, you know, how to -- to
 9 figure out, you know -- to get the food to the
 10 client. So I would never just not -- you know,
 11 just be late just to be late. I would always
 12 let him know hours and hours ahead of time
 13 anytime I had any situation with anything.
 14 Q. If you let him know in advance, you were
 15 not disciplined?
 16 MR. ANDREWS: Objection.
 17 A. I was not disciplined. I don't know if
 18 somebody else was disciplined. I was not
 19 disciplined.
 20 I had a good relationship with Syed
 21 where I was always, you know, clear with him
 22 that, you know -- just go and do my job, and so
 23 if -- if at any time -- if I ever was late, he
 24 would always know hours and hours ahead of
 25 time, you know, if something was going to

1 J. Guzman
 2 happen. I would not just stay quiet just for
 3 him, you know, figure out that I was going to
 4 be late, you know, that I was going to be late
 5 and he didn't know about it.
 6 Q. Do you know what time you were scheduled
 7 to go in to work that day?
 8 A. 5:00 usually, the time that we worked.
 9 Q. 5:00 p.m.?
 10 A. Yes.
 11 Q. Looking on the next page, FD000081 of
 12 Defendant's 69, do you see the entry where it
 13 says, "Juany: Juany Guzman NYC2 Stops 37 @ \$4
 14 Empty 36"?
 15 A. Yes.
 16 Q. Is that a text from you?
 17 A. Yes, it's a text from me.
 18 Q. Is that to Syed?
 19 A. Yes.
 20 Q. What does "NYC2" mean?
 21 A. It means that I was covering Alex's
 22 route, and it's the amount of stops, and the
 23 reason why I put "@ at \$4" is because I did not
 24 want him to -- because you spend a lot more gas
 25 on that route, so I did not want to him to

[40] (Pages 154 to 157)

1 J. Guzman
2 forget that, you know -- because I'm usually
3 getting paid at \$3, but if I cover Alex's
4 route, it needs to be at 4 to compensate the
5 fuel.
6 Q. Do you know why there were thirty-seven
7 and not forty-seven stops that night?
8 A. He said in one prior, "Ill split it".
9 Q. What does that mean to?
10 A. To me, "Ill split it," it means that
11 he's going to try to -- some of the stops, you
12 know, put it to someone else to do it so that
13 we can finish on time.
14 Q. The next entry under that says, "Juany:
15 Juany Guzman Nyp Stops 27 Empty 22".
16 Do you see that?
17 A. Yes.
18 Q. Do you see that from May 24th?
19 A. Yes.
20 Q. What is "Nyp"?
21 A. That's Route P. That's what we were
22 speaking before, Manhattan area, that Lower
23 Manhattan area.
24 Q. That's your regular route?
25 A. Yeah, and the other -- I can't see the

1 J. Guzman
2 other one under that.
3 Q. Let's go to the next page.
4 Looking at FD000082, it says, "Juany:
5 53 stops nyp nyr2 yestrday".
6 Do you see that?
7 A. Yes.
8 Q. That's from May 30th?
9 A. Yes.
10 Q. What does "53 stops nyp nyr2" mean?
11 A. Yes. That means that -- last time, I
12 had the situation where he split, and there was
13 ten stops that was shared with someone else to
14 get the time done. When this happens, it means
15 that when I was doing the route, he -- probably
16 somebody left a bag or he has three bags that
17 are new clients, and he would just add it to my
18 route, to my regular route, so that, you
19 know -- logistically, it makes more sense for
20 the company to do it that way than to put more
21 burden on somebody else in the route.
22 Q. Where do you get that from? Is that
23 from "nyr2"?
24 A. Yeah.
25 NYR2 is the route right on top of NYP.

1 J. Guzman
2 It's like right there. So sometimes, let's
3 say, I'm going to -- because the system --
4 let's say I'm going to 23rd Street but the NYR
5 goes to 23rd Street, so instead of, you know,
6 giving the NYR one, his last stop before that
7 235rd Street is at 28th Street, and I'm already
8 going to be at 23rd Street but one block west,
9 he would just give me the stops. Like he just
10 used to do the logistics so that we can finish
11 faster. So that's why I put "nyr2" because
12 it's part of P and part of NYR2, like one or
13 two stops.
14 Q. When it says "yestrday" --
15 A. Yesterday.
16 Q. -- what does that mean?
17 MR. ANDREWS: Objection.
18 A. I'm not sure. I'm trying -- I cannot
19 read the one before it, so I can't figure out
20 why it would say "yestrday".
21 Q. Two entries after that, it says, "Juany:
22 Nyp Stops 26 Empty 18".
23 Do you see that?
24 A. Yes.
25 Q. That's from May 31st?

1 J. Guzman
2 A. Uh-huh.
3 Q. The following entry says, "Juany:
4 Yesturday stops 24".
5 Do you see that?
6 A. Yes.
7 Q. That's also from May 31st, right?
8 A. Yes.
9 Q. What does "Yesturday stops 24 mean"?
10 MR. ANDREWS: Objection.
11 A. I can't figure out here. I can't figure
12 out because it says 31st, 31st on the top --
13 there's two text messages that says 31st --
14 three text messages that says 31st. And then
15 there's 30th. There's -- May 30th is one text.
16 I can't figure out because it's three texts.
17 Q. Did you ever report the amount of stops
18 you did for a particular night the following
19 day?
20 MR. ANDREWS: Objection.
21 A. I'm trying to recall. Probably.
22 MR. ANDREWS: The question is
23 vague. His stops always ended the
24 following day in the early morning
25 hours.

[41] (Pages 158 to 161)

1 J. Guzman
2 Q. On May 31st where it says, "Nyp Stops 26
3 Empty 18," do you see that?
4 A. Yes.
5 Q. When did you perform twenty-six stops
6 and empty eighteen?
7 MR. ANDREWS: Objection.
8 A. I'm not sure, because there's no time
9 here. It says the 31st, so I'm not --
10 Q. You don't know what that means?
11 MR. ANDREWS: Objection.
12 A. I don't know if it was the 31st or the
13 30th or -- or -- or -- you know, the 30th or
14 the 31st because of the time.
15 Q. A route starts on one day and ends the
16 following day, correct?
17 A. Uh-huh.
18 MR. ANDREWS: Say yes.
19 A. Yes.
20 Q. When would you report the amount of
21 stops and empty bags you completed for your
22 route?
23 A. It would be at the end of the day. We
24 would send a text and write it on a piece of
25 paper.

1 J. Guzman
2 The thing with the text is it was
3 implemented like after some situation occurred,
4 which I don't know what it was. The manifests
5 are the ones that we needed to hand in, write
6 in everything, but the text, it was something
7 that he wanted because, I believe, they had a
8 shortage of bags or something like that, I
9 remember, and what he wanted to do was before
10 he went to sleep, he wanted to put in --
11 instead of, you know, coming into the office
12 and sitting down in the office at the end of
13 the night and reading it off the manifest, he
14 wanted for us to send it to him. So from his
15 house, he would input the data of how many
16 empty bags. I believe that maybe -- I don't
17 know -- corporate or someone was asking for
18 those numbers.
19 Q. You didn't always text the number of
20 bags you picked up, did you?
21 MR. ANDREWS: Objection.
22 A. I see here just, "Empty 18," "Empty 36,
23 "Empty 22". Yeah.
24 Q. There are some that just have stops
25 without empty.

1 J. Guzman
2 Do you see that on FD000082?
3 MR. ANDREWS: Objection.
4 A. Stops? Which one is that one?
5 Q. The top one.
6 MR. ANDREWS: What page?
7 MR. POLLACK: 000082.
8 MR. ANDREWS: This one, it
9 doesn't say how many empties
10 (indicating). That's Mr. Pollack's
11 question.
12 A. Yeah, for some reason, that day it's not
13 there. I'm not sure if I was required that day
14 or not.
15 But it's not there for that because they
16 would -- they would get worried when there was
17 not enough bags, you know, because they had
18 like an order or something like that that
19 didn't get on time. So that's when -- when
20 there was enough bags -- when there was enough
21 bags, he didn't really mind, but when they
22 didn't have enough bags, you know, he needed
23 the numbers to figure out if we would have
24 enough bags for the next day, to pack up the
25 next day.

1 J. Guzman
2 Q. Is it your testimony that you don't
3 understand what the fourth text on FD000082,
4 which states "Yesturday stops 24," means?
5 MR. ANDREWS: Objection.
6 A. What I'm trying to say is that there's
7 three texts on the 31st, so I don't know if
8 that means that it was for the 30th or what
9 because there's something else on the same day
10 that has the amount of stops.
11 Q. Do you remember a route that you drove
12 that had twenty-four stops?
13 A. I don't remember, but like I said,
14 sometimes the stops would vary depending if we
15 would split it or whatever Syed would do. You
16 know, sometimes there were less stops.
17 Q. Now looking at FD000083, the first entry
18 says, "Juany: Juany Guzman Stops 26 Empty 18".
19 Do you see that text?
20 A. Yes.
21 Q. Is that from you?
22 A. Yes.
23 Q. To Syed?
24 A. Yes.
25 Q. Do you know what route this is for?

1 J. Guzman
2 A. No. I can't tell from -- I can't tell
3 from the -- this text.
4 Q. Do you know if you were driving a
5 different route?
6 A. I can't -- it's -- it's been -- I can't
7 tell because it's not there.
8 Q. What about for the entry that says,
9 "Juany: Juany Guzman Stops 43 Empty 36" from
10 June 5th?
11 Do you know what route that is for?
12 A. I don't remember.
13 Q. Now looking at the following page,
14 FD000084, it says, "Juany: Juany Guzman Stops
15 41 Empty 36" from June 7th.
16 Do you see that?
17 A. Yes.
18 Q. Do you know what route that's for?
19 A. Based on this document, I can't
20 remember. I can't tell.
21 Q. If you were ever driving a route besides
22 Route P, did you indicate what route you had
23 just driven?
24 A. Probably. Probably, yes, but if it
25 was -- if it was in the city -- let's say,

1 J. Guzman
2 someone was sick or anything and I had to cover
3 for someone on their route or a certain amount
4 of stops get put on, unless Syed requested me
5 to, I usually did not put like a number,
6 whatever, because it was not important because
7 at the end of the day, what the text was mostly
8 for was for stops and empties.
9 Like I just used to do extra. I used to
10 try to put so he could remember where it was
11 because the manifest's the one that does that
12 job. This was just for him not to come to the
13 office in the morning so that way he could do
14 it from his house.
15 Q. Looking at the next entry, June 8th, it
16 says, "Juany: Juany Guzman Stops 10 Empty 7".
17 Do you see that?
18 MR. ANDREWS: That's June 7th?
19 A. June 7th?
20 Q. Then it says June 8th underneath.
21 MR. ANDREWS: I'm sorry. You're
22 talking about the thing in between the
23 June 7th and June 8th?
24 Q. It says, "Juany: Juany Guzman Stops 10
25 Empty 7".

1 J. Guzman
2 Do you see that?
3 A. Yes.
4 Q. Do you know if your route had been
5 changed by June 8, 2012?
6 A. June 8, 2012? No, I don't recall if it
7 was.
8 Q. Had you ever done a route that only
9 consisted of ten stops before June 8, 2012?
10 A. I don't recall. Not typically. I don't
11 recall.
12 Q. Do you believe that this is one of the
13 routes that were cut from you?
14 MR. ANDREWS: Objection.
15 A. From -- from -- more or less, from that
16 day on, that's when more -- more -- you know,
17 things were just -- the -- the -- it just
18 started to go like down, you know, where I
19 noticed that, you know, maybe I don't have a
20 stop, maybe I do, and the only time that I
21 would do like more stops is if Alex would call
22 that his wife -- you know, in a situation about
23 his wife. That was the only way that I would
24 receive some stops after this date.
25 You know, if it was for Manhattan, he

1 J. Guzman
2 would just do whatever was, you know, more
3 convenient. He would just give me like seven
4 stops, ten stops, something like that, which at
5 that point, I didn't have to send a text in
6 because I wasn't picking up numbers of bags
7 after that.
8 Q. You earlier testified that you believed
9 you were retaliated against after the company
10 was served with the complaint.
11 Is that accurate?
12 MR. ANDREWS: Objection.
13 A. I believe so.
14 Q. By "retaliated against," you meant that
15 the number of stops you were assigned was
16 reduced?
17 A. Yeah.
18 For example, from the time that he found
19 out -- not from the time that it was served,
20 from the time that he found out, everything
21 changed. You know, after that time he found
22 out, there was no verbal communication between
23 us, you know, like -- like -- like before, you
24 know, we would come in hey, how you doing, Bro,
25 and like that. It was not like that, you know.

[43] (Pages 166 to 169)

1 J. Guzman
2 It was more like straight, you know, like more
3 on a defensive side. And then that's when like
4 it just started from there and saw the
5 difference after that.
6 And then -- after -- after they got
7 served, it just was a lot worse. Even though
8 that one or two occasions when Alex, with his
9 route, had any situation, since there's no one
10 else that could do the route because everybody
11 that would make a lot of mistakes that he put
12 there as well, you know, he needed for me to
13 cover the route. So he would do it, but if
14 that route was not there, like he wouldn't give
15 me anything, like just little stuff.
16 Q. How many was the most stops you
17 performed after the alleged retaliation?
18 MR. ANDREWS: Objection.
19 A. I don't recall.
20 Q. I think you said before maybe three to
21 four stops per night.
22 A. There was one -- there was one time when
23 it was really ridiculous. It was like -- I
24 went in, and I just laughed because it was like
25 four stops. They were all in the city, just

1 J. Guzman
2 three blocks, four stops.
3 Q. Was there a time where you ever got more
4 than four stops?
5 A. Yeah. There was a time I got seven.
6 Q. Was there ever a time where you got more
7 than seven in June 2012?
8 A. Ten from June 7th as it shows there.
9 Q. Looking at the following page, FD000085,
10 do you see that top entry that says, "Juany:
11 Juany Guzman Stops 43 Empty 55"?
12 A. Yes.
13 Q. That's from June 25, 2012?
14 A. Yes.
15 Q. You did perform forty-three stops on
16 June 25, 2012?
17 A. Uh-huh.
18 MR. ANDREWS: Objection.
19 A. Yes.
20 Q. The next two text messages, do you see
21 it says, "Juany: Syed will I have a route for
22 tomorrow"?
23 A. Yes.
24 Q. And then the next text says, "Juany:
25 Cuz I can't sit waiting on you guys to deside

1 J. Guzman
2 at Almost 9 pm that I don't have a route".
3 Do you see that?
4 A. Yes.
5 Q. Do you remember the date of the last
6 deliveries you performed work before
7 June 27, 2012?
8 A. Based on this -- I don't remember the
9 time, but based on this document would be
10 June 8th.
11 Q. What about June 25th?
12 A. No, June 8th before that one stop on
13 June 25th.
14 Q. You see, still on FD000085, where it
15 says, the last one, "Juany: That's a waste of
16 time for me and time is money".
17 Do you see that entry?
18 A. 85?
19 MR. ANDREWS: The last thing
20 (indicating).
21 A. Yeah, that's the same text as the one
22 prior to that. It's just that I texted in a
23 way where I didn't -- one sentence, and then I
24 pressed enter, and then I did another one, but
25 it's relevant to the one before.

1 J. Guzman
2 And at that point, my situation was that
3 they were playing games from June 8th --
4 from June -- like that week of June 8th, the
5 10th, around there, they were playing games of,
6 you know, when I told you that they don't call,
7 whatever. So when he needed -- he had the
8 problem. He had nobody to cover a route. Then
9 that day I had to come -- I had to do that
10 route. Remember when I told you in the
11 beginning?
12 But then after that, since I noticed
13 that they were playing that game -- so I asked
14 him -- I asked him -- instead of waiting for,
15 you know, them to call me late like they were
16 doing after they started playing that game, I
17 texted him to ask him in the morning. I ask
18 him when I send this -- I send this text
19 (indicating). Once I send this text, I also
20 send this one (indicating). I said Syed will I
21 have a route tomorrow because, you know, they
22 been playing that game for quite some time, and
23 I was a bit upset and I wrote, "Cuz I can't sit
24 waiting on you guys to deside at Almost 9 pm
25 that I don't have a route," because, you know,

[44] (Pages 170 to 173)

1 J. Guzman
 2 I'm driving towards the facility, and it's not
 3 fair for me not to know anything, and I get
 4 there, and then there's not nothing for me, so
 5 --
 6 And then I wrote that's a waste of my
 7 time and time is money because if I don't do a
 8 route, I don't get paid, and if I drive from my
 9 house to the warehouse, that's wasting money.
 10 Q. How were you wasting money if you're
 11 driving from your house to the warehouse?
 12 MR. ANDREWS: Objection.
 13 A. That's -- that's common sense. If you
 14 drive from Long Island to here, to New York,
 15 and when you get here, your boss tells you you
 16 don't have work, you just wasted money on gas.
 17 Q. On gas?
 18 A. Yeah, on gas, and, you know, you can't
 19 waste money on gas when you don't have stops
 20 for -- no work for a week.
 21 Q. Were you looking for other positions in
 22 the end of June 2012?
 23 A. No, I was not. I was not looking for
 24 other positions at that time. I considered
 25 myself an employee for Fresh Diet. I was just

1 J. Guzman
 2 trying the figure out, you know, when he was
 3 going to stop being a knucklehead and, you
 4 know, just for me to have the work that I
 5 always had before.
 6 Q. When you said "time is money," what did
 7 you mean by that?
 8 MR. ANDREWS: Objection, asked
 9 and answered.
 10 Answer it one more time, and
 11 then we're going to move on.
 12 A. Yeah, the same thing. If I drive from
 13 my house to somewhere for an hour or half an
 14 hour and I have to put gas and sit in a car and
 15 go there, I'm wasting my time, and I'm wasting
 16 money on gas.
 17 Q. How are you wasting your time?
 18 A. By the same way. If you drive from Long
 19 Island to here, when you get here, your boss
 20 tells you there's nothing to do, didn't you
 21 just waste an hour of your time? You waste
 22 your time. I waste my time going there because
 23 if you don't want me to do my work, just tell
 24 me, you know. Just tell me hey, we don't need
 25 your services anymore, we don't need you to

1 J. Guzman
 2 come to work, we don't need you here, and then
 3 I can move on with my life and go and look for
 4 an employment, but I considered myself an
 5 employee at that time.
 6 Q. As of June 27, 2012?
 7 A. Yeah. Around that time I considered
 8 myself an employee.
 9 There's a lot more texts from that same
 10 day because he gave me like some runaround. He
 11 said oh, didn't Owen text you, no, I didn't
 12 receive anything.
 13 Q. Looking at FD000087, do you see that
 14 last text that says, "Me: Maybe c2 or a
 15 connecticut?
 16 A. Yes.
 17 Q. Do you know what that means?
 18 A. Yes.
 19 Q. What does that mean?
 20 A. At that time, since I had that
 21 conversation with him on the last page that we
 22 didn't go over, he knew for a fact that my car
 23 was not -- especially given my financial
 24 struggle at that time for not having a stable
 25 income for those weeks, he knew that if he

1 J. Guzman
 2 offered me -- if he would say I maybe have
 3 something in Connecticut, there's no way I can
 4 get to Connecticut. There's no way, given
 5 those weeks without having any money coming in,
 6 that I can put gas, tolls, and drive up there
 7 with a car that I probably didn't change my oil
 8 at that time to drive all the way up to
 9 Connecticut because if I get stranded in the
 10 middle of the road, they're not going to come
 11 out with AAA to help me out. So that's why he
 12 sent that because he knows that I wasn't going
 13 to be able to do that route. Yeah, it's there.
 14 Q. Looking at the next page, FD000088,
 15 there's a text, "Juany: I can't do connecticut
 16 my car is not good enough to go out there".
 17 Do you see that?
 18 A. Yes.
 19 Q. Is that what you were just referring to?
 20 A. Yeah. That was my personal situation at
 21 the time.
 22 Q. Then the next one says, "Me: Ok.
 23 Nothing else available then."
 24 Do you see that?
 25 A. Yes. That's -- Syed wrote that. Yes.

[45] (Pages 174 to 177)

1 J. Guzman
2 Q. Is that in response to your text message
3 above?
4 A. Yes, that's in response to the text
5 message.
6 Q. Now looking at the next one, it says,
7 "Juany: Not even C2".
8 Do you see that?
9 A. Yes.
10 Q. What does that mean?
11 A. At that time, it was -- do you remember
12 what I told you about the situation with Alex,
13 where sometimes he didn't come? So I respond
14 to him, so you don't -- not even Alex, you
15 know, Alex's route, there's nothing there. He
16 said there's nothing. So he had to cover --
17 Q. C2 is a New York route?
18 A. Yes. That's -- that's the one that I
19 said that, you know, you go to Queens, Long
20 Island, Brooklyn. That's Alex's. He's on the
21 list, Alex's route.
22 Q. Looking back at FD000087 --
23 A. 87.
24 Q. -- the last text on that, it says,
25 "Maybe c2 or a connecticut".

1 J. Guzman
2 Do you see that?
3 A. Yes.
4 Q. Did you understand that Syed was
5 offering you Alex's route?
6 MR. ANDREWS: Objection.
7 A. I understood that he was telling me the
8 Connecticut route, and he wrote maybe Alex's
9 route, probably -- what I understood there, he
10 wasn't sure if Alex was going to call out or
11 not call out, you know. So that's how I
12 understood it, type of thing.
13 Q. Now looking at FD000089, do you see that
14 first entry? It says, "Juany: Juany Guzman --
15 A. Yes.
16 Q. -- Route c2 Stops 31 Empty 41"?
17 A. Yes.
18 Q. That's from June 28, 2012?
19 A. Yes. I see it.
20 Q. Does that indicate that you performed
21 the C2 route on June 28, 2012?
22 A. Yes.
23 I actually -- from reading that text, I
24 remember, more or less, what happened that day.
25 After that, if you see FD000088, Syed wrote in

1 J. Guzman
2 the June 27th, "Looks like it's covered," and
3 then after that, he wrote, "I'm going to sleep
4 contact owen if you need any info". So I did
5 as he stated, and I contacted Owen, and Owen
6 then told me that I had a C2 because Alex was
7 not going to be able to do it, and that's why
8 it seems as that day I did that route.
9 And this text here, the one that you're
10 relating to, shows the route, the stops, the
11 empty, and then if I had any trouble, I would
12 write in the bottom. That's what's there, you
13 know, just to make sure that he contacts the
14 client to let him know that the bag is next to
15 the foyer.
16 Q. This indicates that you performed work
17 on June 28, 2013 --
18 A. Yes.
19 Q. -- and that you performed 31 stops for
20 that route.
21 A. Yes.
22 Q. You did perform work after
23 June 26, 2012.
24 Is that an accurate statement?
25 A. Yeah. Seeing this, yes.

1 J. Guzman
2 Q. Now looking at the following page,
3 FD000090, do you see the fourth entry? It
4 says, "Juany: Juany guzman --
5 A. Yes.
6 Q. -- C2 Stops 29 Empty 25".
7 Do you see that?
8 A. Yes.
9 Q. Is that from June 29, 2012?
10 A. Yes.
11 Q. What does that indicate?
12 A. That indicates the same as the other
13 texts, the route that I covered, the stops, and
14 the empties.
15 Q. After June 8, 2012 --
16 A. Which page is that?
17 Q. I'm just asking a question.
18 A. Oh, I'm sorry.
19 Q. -- there were times where you received
20 in excess of thirty stops for your routes --
21 MR. ANDREWS: Objection.
22 Q. -- during that month.
23 Is that an accurate statement now that
24 you have looked at this document?
25 MR. ANDREWS: Objection.

[46] (Pages 178 to 181)

1 J. Guzman
2 A. Yeah, one or two times, yes.
3 Q. I'm looking at FD000085.
4 You had a route that had forty-three
5 stops on June 25, 2012.
6 A. I'm trying to get to it.
7 MR. ANDREWS: He's asking you
8 about that entry (indicating).
9 A. Okay. I see it here. Say that question
10 again.
11 Q. On June 25, 2012, you had received a
12 route that allowed you to make forty-three
13 stops for that night, correct?
14 A. Yes, on the -- Alex's route, yes.
15 Q. You believe that to be Alex's route?
16 A. Yes.
17 Q. C2?
18 A. Yes.
19 Q. Then on June 28th, FD000089, you
20 received a route that had thirty-one stops,
21 correct?
22 A. Yes, also Alex's route.
23 Q. Then on FD000090 on June 29, 2012, you
24 received a route that had twenty-nine stops,
25 correct?

1 J. Guzman
2 A. Yes.
3 MR. ANDREWS: Are you okay? Do
4 you need a break or anything?
5 THE WITNESS: No, I'm good.
6 MR. POLLACK: Let's just take a
7 five-minute break. I may not have any
8 other questions.
9 (Whereupon, a recess was taken
10 at this time.)
11 MR. POLLACK: Pending the
12 production of the additional documents
13 that I've requested today, I have no
14 further questions for Mr. Guzman. Thank
15 you.
16 MR. ANDREWS: Thank you.
17 (Time Noted: 3:04 p.m.)
18
19
20 JUAN Y GUZMAN
21
22 Subscribed and sworn to before me
23 this ____ day of _____, 2013.
24
25 Notary Public

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1
2 CERTIFICATE
3
4 I, MELISSA KAHANE, hereby certify that
5 the Examination Before Trial of JUAN Y GUZMAN
6 was held before me on the 7th day of October,
7 2013; that said witness was duly sworn before
8 the commencement of his testimony; that the
9 testimony was taken stenographically by myself
10 and then transcribed by myself; that the party
11 was represented by counsel as appears herein;
12 That the within transcript is a true
13 record of the Examination Before Trial of said
14 witness;
15 That I am not connected by blood or
16 marriage with any of the parties; that I am not
17 interested directly or indirectly in the
18 outcome of this matter; that I am not in the
19 employ of any of the counsel.
20 IN WITNESS WHEREOF, I have hereunto set
21 my hand this 7th day of October, 2013.
22
23
24
25 MELISSA KAHANE

[47] (Pages 182 to 185)

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